

# Guide to Judiciary Policy

Vol 14: Procurement

Ch 1: Overview

## Appx 1B: Solicitation Provisions and Contract Clauses

### B.1.1 Definitions

#### Provision

A term or condition used only in solicitations and applying only before award, e.g., provisions which provide information about how offers will be evaluated.

#### Clause

A term or condition used in solicitations and contracts and applying both before and after award.

### B.1.2 Applicability

This Appendix sets forth standard provisions and clauses to be included in solicitations and contracts for products and services. Applicable provisions and clauses must be included in the prescribed Uniform Contract Format (UCF) section when issuing a solicitation or contract which is required to follow the UCF. **See:** [Appx 1A](#); [Appx 1C](#). When UCF does not apply, such as in small purchase procedures, incorporate appropriate clauses and provisions in the following order:

- clauses followed by provisions
- clauses/provisions incorporated by reference followed by those required to be incorporated in full text (**See:** [Appx 1C](#))
- by clause/provision number

### B.1.3 Numbering of Provisions and Clauses

Provisions and clauses are numbered with the chapter or appendix prescribing their use in Volume 14 of the Guide. For instance, Clause 1-1 is in Chapter 1, Provision 2-1 is in Chapter 2, and Provision B-1 is prescribed in this Appendix B.

Beneath each clause or provision title are instructions on where in this volume of the Guide the prescription for the usage of that clause or provision is located. The instructions also say in which section of the UCF (A through M) to insert the clause or

provision if UCF applies. The prescription will indicate the circumstances for use of the provision or clause, e.g., “Clause X-X is included in all solicitations and contracts.”

The [Matrix of Solicitation Provisions and Clauses \(Appx 1C\)](#) is a quick reference document to help COs:

- find clauses, provisions, their prescription(s), and the applicable UCF section;
- determine whether specific clauses or provisions may be incorporated by reference or must be incorporated in full text; and
- determine whether the clause or provision is always required (R) or only required when certain conditions apply (A).

### **B.2.1 Solicitation Provisions and Contract Clauses Prescribed in Appendix B.**

- (a) [Provision B-1](#), Solicitation Provisions Incorporated by Reference is included in all solicitations.
- (b) [Clause B-5](#), Clauses Incorporated by Reference is included in all solicitations and contracts.
- (c) [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.

### **Provision B-1, Solicitation Provisions Incorporated by Reference**

*As prescribed in [Appx B. § B.2.1.\(a\)](#), include 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 found on the [judiciary's public website](#).

(end)

## **Clause B-5, Clauses Incorporated by Reference**

*As prescribed in [Appx B, § B.2.1.\(b\)](#), include 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 found on the [judiciary's public website](#).

(end)

## **Provision B-10, RESERVED**

## **Clause B-15, RESERVED**

## **Clause B-20, Computer Generated Forms**

*As prescribed in [Appx B, § B.2.1.\(c\)](#), include 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)

## **Clause 1-1, Employment by the Government**

*As prescribed in [§ 150.30.40](#), include 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)

## **Clause 1-5, Conflict of Interest**

*As prescribed in [§ 150.30.40](#) and [§ 520.75\(a\)](#), include 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.

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.

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)

## **Clause 1-10, Gratuities or Gifts**

*As prescribed in [§ 150.50.50](#), include this clause in Section I.*

### **Gratuities or Gifts (JAN 2010)**

- (a) The right of the contractor to proceed may be terminated by written notice if, after notice and hearing, the Procurement Executive or designee determines - at a level above the contracting officer - that the contractor, its agent or another representative:
  - (1) offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the judiciary; and
  - (2) intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) of this clause, the judiciary is entitled to pursue the same remedies as in a breach of contract.
- (d) The rights and remedies of the judiciary provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(end)

## **Clause 1-15, Disclosure of Contractor Information to the Public**

*As prescribed in [§ 170.70](#), 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)

### **Provision 2-1, Request for Information or Solicitation for Planning Purposes**

*As prescribed in [§ 210.60.40](#), include 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)

### **Clause 2-5A, Inspection of Products**

*As prescribed in [§ 220.10.70\(a\)](#), include 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)

#### **Clause 2-5B, Inspection of Services**

*As prescribed in [§ 220.10.70\(b\)](#), include 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)

**Clause 2-10, Responsibility for Products**

*As prescribed is [§ 220.10.70\(c\)](#), include this clause in Section E.*

**Responsibility for Products (JAN 2010)**

- (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)

### **Provision 2-15, Warranty Information**

*As prescribed in [§ 220.20.40\(a\)](#), 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)

### **Clause 2-20A, Incorporation of Warranty**

*As prescribed in [§ 220.20.40\(b\)](#), 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)

## **Clause 2-20B, Contractor Warranty (Products)**

*As prescribed in [§ 220.20.40\(c\)](#), include this clause in Section I.*

### **Contractor Warranty (Products) (JAN 2010)**

- (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)

## **Clause 2-20C, Warranty of Services**

*As prescribed in [§ 220.20.40\(d\)](#), 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)

### **Clause 2-25A , Delivery Terms and Contractor's Responsibilities**

As prescribed in [§ 220.25.70\(a\)](#), 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/marketing 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)

### **Clause 2-25B, Commercial Bill of Lading Notations**

*As prescribed in [§ 220.25.70\(b\)](#), 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)

**Clause 2-30A, Time of Delivery**

As prescribed in [§ 220.25.70\(c\)](#), 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)

**Clause 2-30B, Desired And Required Time Of Delivery**

As prescribed in [§ 220.25.70\(d\)](#), include this clause in Section F and fill in the tables.

**Desired And Required Time Of Delivery (JAN 2010)**

- (a) The judiciary desires delivery to be made according to the following schedule:

<b>Desired Delivery Schedule</b>		
<i>(Contracting Officer insert specific details)</i>		
<b>Item No.</b>	<b>Quantity</b>	<b>Within Applicable Specified Time Frame (i.e. number of calendar days after award, after contract start date, or after a specified date, etc.)</b>


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:

<b>Required Delivery Schedule</b>		
<i>(Contracting Officer insert specific details)</i>		
<b>Item No.</b>	<b>Quantity</b>	<b>Within Applicable Specified Time Frame</b> (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.

<b>Offeror's Proposed Delivery Schedule</b>		
<i>(Offeror insert specific details)</i>		
<b>Item No.</b>	<b>Quantity</b>	<b>Within Applicable Specified Time Frame</b> (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 (2) 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)

**Clause 2-35 F.o.b. Destination, Within Judiciary's Premises**

*As prescribed in [§ 220.25.70\(e\)](#), 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)

**Clause 2-40A, Variation in Quantity**

As prescribed in [§ 220.25.70\(f\)](#), 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 [§ 220.25.70\(g\)](#), 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)

### **Clause 2-45, Packaging and Marking**

*As prescribed in [§ 220.25.70\(h\)](#), 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)

### **Clause 2-50, Continuity of Services**

*As prescribed in [§ 220.25.80\(a\)](#), 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)

### **Clause 2-55, Privacy or Security Safeguards**

*As prescribed in [§ 220.25.80\(b\)](#), 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)

### **Clause 2-60, Stop-Work Order**

*As prescribed in [§ 220.25.80\(c\)](#), include this clause in Section F.*

#### **Stop-Work Order (JAN 2010)**

- (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 order 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)

### **Clause 2-65, Key Personnel**

*As prescribed in [§ 220.25.80\(d\)](#) and [§ 520.75\(b\)](#), 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:

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(end)

**Provision 2-70, Site Visit**

*As prescribed in [§ 220.25.80\(e\)](#), include 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)

## **Clause 2-75, Liquidated Damages**

As prescribed in [§ 220.30.50](#), include this clause in Section F, inserting 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)

## **Clause 2-80, Judiciary Property**

As prescribed in [§ 220.35\(c\)](#), 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)

**Provision 2-85A, Evaluation Inclusive of Options**

*As prescribed in [§ 220.40.60\(a\)\(1\)](#), 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)

**Provision 2-85B, Evaluation Exclusive of Options**

*As prescribed in [§ 220.40.60\(a\)\(2\)](#), 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)

**Provision 2-85C, Evaluation of Options Exercised at Time of Contract Award**

*As prescribed in [§ 220.40.60\(a\)\(3\)](#), 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)

**Clause 2-90A, Option for Increased Quantity**

*As prescribed in [§ 220.40.60\(b\)\(1\)](#), 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 [§ 220.40.60\(b\)\(2\)](#), 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 [§ 220.40.60\(b\)\(3\)](#), 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 [§ 220.40.60\(b\)\(4\)](#), 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)

## **Clause 2-95, Material Requirements**

As prescribed in [§ 220.25.70\(i\)](#), 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)

## **Provision 2-100, Brand Name or Equal**

*As prescribed in [§ 230.40.30](#), 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)



**Provision 2-105, Economic Purchase Quantity-Products**

As prescribed in [§ 220.25.70\(j\)](#), 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.

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- (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)

**Clause 2-110, Option to Purchase Equipment**

As prescribed in [§ 220.45.70](#), 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)

### **2-115 Terms for Commercial Advance Payment of Purchases**

*As prescribed in [§ 220.55.70\(a\)](#), 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 Clause 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 / her 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:** *In accordance with [§ 220.55.70\(b\)](#), 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)

**2-120 Submission of Invoice**

*As prescribed in [§ 220.55.70\(c\)](#), 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)

### **2-125 Security for Advance Payment**

*As prescribed in [§ 220.55.70\(d\)](#), 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 Clause 2-115, Terms for Commercial Advance Payment of Purchases.

(end)

### **Clause 2-130, Energy Efficiency in Energy-Consuming Products**

*As prescribed in [§ 220.60.70\(a\)](#), include this clause in Section I.*

#### **Energy Efficiency in Energy-Consuming Products (JAN 2010)**

(a) Definition. As used in this clause:

“Energy-efficient product”:

- (1) Means a product that:
  - (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
  - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program (FEMP)

- (2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (**see: [42 U.S.C. § 8259b](#)**).
- (b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are:
    - (1) Delivered;
    - (2) Acquired by the Contractor for use in performing services at a judiciary-controlled facility;
    - (3) Furnished by the Contractor for use by the judiciary; or
    - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
  - (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless:
    - (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
    - (2) Otherwise approved in writing by the Contracting Officer.
  - (d) Information about these products is available at:
    - (1) [ENERGY STAR®](#); and
    - (2) [FEMP](#).

(end)

**Clause 2-135, IEEE Standard for the Environmental Assessment of Personal Computer Products**

*As prescribed in [§ 220.60.70\(b\)](#), include this clause in Section I.*

**IEEE Standard for the Environmental Assessment of Personal Computer Products (JAN 2010)**

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

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“IEEE” means Institute of Electrical and Electronics Engineers

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

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

- (b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were Electronic Product Environmental Assessment Tool (EPEAT) Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
- (c) For information on IEEE standard 1680, **see:** [www.epeat.net](http://www.epeat.net).

(end)

### **Clause 3-1, Contractor Use of Mandatory Sources of Products or Services**

*As prescribed in [§ 310.20.70](#), include 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)  
1310 Braddock Place  
Alexandria, VA 22314  
703-310-0500

National Industries for the Severely Handicapped (NISH)  
8401 Old Courthouse Road  
Vienna, VA 22182  
571-226-4660

(end)

### **Clause 3-3, Provisions, Clauses, Terms and Conditions - Small Purchases**

*As prescribed in [§ 310.50.30\(d\)](#), [§ 325.30.20\(b\)](#), and [§ 325.45.10\(c\)](#), include this clause in small purchase requests for quotation (RFQs) and purchase orders.*

#### **Provisions, Clauses, Terms and Conditions - Small Purchases (JAN 2010)**

- (a) The following provisions are incorporated by reference into the request for quotations (RFQ):
  - (1) [Provision 3-210](#), Protests (AUG 2004)
  - (2) [Provision 7-60](#), Judiciary Furnished Property or Services (JAN 2003)
  
- (b) The contractor shall comply with the following clauses incorporated by reference:



- (1) [Clause 1-15](#), Disclosure of Contractor Information to the Public (AUG 2004)
  - (2) [Clause 2-60](#), Stop Work Order (JAN 2010)
  - (3) [Clause 3-70](#), Determination of Responsibility (JAN 2003)
  - (4) [Clause 3-205](#), Protest After Award (JAN 2003)
  - (5) [Clause 7-20](#), Security Requirements (JAN 2010)
  - (6) [Clause 7-30](#), Public Use of the Name of the Federal Judiciary (JAN 2003)
  - (7) [Clause 7-35](#), Disclosure or Use of Information (AUG 2004)
  - (8) [Clause 7-85](#), Examination of Records (JAN 2003)
  - (9) [Clause 7-130](#), Interest (Prompt Payment) (JAN 2003)
  - (10) [Clause 7-135](#), Payments (JAN 2003) (Payment means acceptance by the inclusion of this clause.)
  - (11) [Clause 7-140](#), Discounts for Prompt Payment (JAN 2003)
  - (12) [Clause 7-150](#), Extras (JAN 2003)
  - (13) [Clause 7-185](#), Changes (JAN 2003)
  - (14) [Clause 7-200](#), Judiciary Delay of Work (JAN 2003) (Applies for products and fixed-price services.)
  - (15) [Clause 7-210](#), Payment for Emergency Closures (AUG 2004)
  - (16) [Clause 7-235](#), Disputes (JAN 2003)
- (c) The contractor shall comply with the following clauses, incorporated by reference, unless the stated circumstances do not apply:
- (1) [Clause B-20](#), Computer Generated Forms (JAN 2003) (Applies when the contractor is required to submit data on standard or optional forms.)
  - (2) [Clause 6-60](#), Rights in Data - General (JAN 2010) (Applies if data will be produced, furnished, or acquired under the purchase order.)

- (3) [Clause 7-145](#), Government Purchase Card (JAN 2003) (Applies when the CO determines that the purchase card can be used to make payments.)
- (4) [Clause 2-115](#), Terms for Commercial Advance Payment of Purchases (OCT 2006) (Applies if advance payment will be authorized.)
- (5) [Clause 2-115](#), Alt I (Applies if advance payment is authorized for photocopy equipment maintenance.)
- (6) The following apply to products only:
  - a) [Clause 2-25A](#), Delivery Terms and Contractor's Responsibilities (JAN 2003) (Purchase order will specify whether delivery is expected at destination or origin.)
  - b) [Clause 2-45](#), Packaging and Marking (AUG 2004) (Applies to fixed-price products or for a service involving furnishing of products.)
  - c) [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) [Clause 1-1](#), Employment by the Government (JAN 2003)
  - b) [Clause 1-5](#), Conflict of Interest (AUG 2004)
  - c) [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) [Clause 7-40](#), Judiciary-Contractor Relationship (JAN 2003) (Applies to services when not involving judiciary information technology funds.)
  - e) [Clause 7-65](#), Protection of Judiciary Buildings, Equipment and Vegetation (JAN 2003) (Applies when services are performed at a judiciary installation.)
  - f) [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)

### **Provision 3-5, Taxpayer Identification**

*As prescribed in [§ 325.30.20\(b\)](#) and [§ 330.10.30\(a\)](#), include 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)

**Provision 3-10, Data Universal Numbering System (DUNS) Number**

*As prescribed in [§ 330.10.30\(b\)](#), include 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 [www.customerservice@dnb.com](mailto: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](mailto:globalinfo@mail.dnb.com).

(end)

**Provision 3-15, Place of Performance**

*As prescribed in [§ 330.10.30\(c\)](#), include 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)

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

*As prescribed in [§ 330.10.30\(d\)](#), include 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 [18 U.S.C. § 1001](#).
- (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)



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

*As prescribed in [§ 330.10.30\(e\)](#), include 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)

### **Provision 3-30, Certificate of Independent Price Determination**

As prescribed in [§ 330.10.30\(f\)](#), include 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)

### **Clause 3-35, Covenant Against Contingent Fees**

*As prescribed in [§ 330.10.30\(g\)](#), include 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)

### **Clause 3-40, Restrictions on Subcontractor Sales to the Government**

*As prescribed in [§ 330.10.30\(h\)](#), include 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)

### **Clause 3-45, Anti-Kickback Procedures**

*As prescribed in [§ 330.10.30\(i\)](#), include 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)

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

*As prescribed in [§ 330.10.30\(j\)](#), include 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)

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

*As prescribed in [§ 330.10.30\(k\)](#), include 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)



### **Provision 3-60, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions**

*As prescribed in [§ 330.10.30\(l\)](#), include 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)

### **Clause 3-65, Limitation on Payments to Influence Certain Federal Transactions**

*As prescribed in [§ 330.10.30\(m\)](#), include 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 [5 U.S.C.](#), including a position under a temporary appointment.
- (2) a special government employee, as defined in [18 U.S.C. § 202](#);
- (3) an individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, [5 U.S.C. App. 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 that 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)

**Provision 3-70, Determination of Responsibility**

*As prescribed in [§ 330.10.30\(n\)](#), include 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)

**Provision 3-75, RESERVED**

**Provision 3-80, Submission of Offers**

*As prescribed in [§ 330.10.30\(p\)](#), include 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)

### **Provision 3-85, Explanation to Prospective Offerors**

*As prescribed in [§ 330.10.30\(q\)](#), include 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)

### **Provision 3-90, Late Submissions, Modifications and Withdrawals of Offers**

*As prescribed in [§ 330.10.30\(r\)](#), include 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)

### **Provision 3-95, Preparation of Offers**

*As prescribed in [§ 330.10.30\(s\)](#), include 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)

### **Provision 3-100, Instructions to Offerors**

*As prescribed in [§ 330.10.30\(t\)](#), include 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 Provision 3-115, "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:** *As prescribed in [§ 330.10.30\(t\)\(1\)](#), 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:** *As prescribed in [§ 330.10.30\(t\)\(2\)](#), add 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)

### **Clause 3-105, Audit and Records – Negotiation**

*As prescribed in [§ 330.10.30\(u\)](#), include this clause in Section I.*

#### **Audit and Records – Negotiation (JAN 2010)**

(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) Detailed Cost Information

If the contractor has been required to submit detailed cost information in connection with any pricing action relating to this contract, the contracting officer, or an authorized representative of the contracting officer 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 detailed cost information is 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)

**Provision 3-110, RESERVED**

**Provision 3-115, Facsimile Offers**

*As prescribed in [§ 330.10.30\(v\)](#), include 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)

### **Clause 3-120, Order of Precedence**

*As prescribed in [§ 330.10.30\(w\)](#), include 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)

### **Provision 3-125, Acknowledgment of Solicitation Amendments**

*As prescribed in [§ 330.10.30\(x\)](#), include 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)

### **Provision 3-130, Authorized Negotiators**

As prescribed in [§ 330.10.30\(y\)](#), include 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: \_\_\_\_\_  
E-mail: \_\_\_\_\_

(end)

### **Provision 3-135, Single or Multiple Awards**

As prescribed in [§ 330.10.30\(z\)](#), include 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)

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

As prescribed in Section [§ 330.10.30\(aa\)](#), include 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)

### **Clause 3-145, Payment for Overtime Premiums**

*As prescribed in [§ 330.10.30\(bb\)](#), include 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)

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

As prescribed in [§ 330.10.30\(cc\)](#), include 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)

**Clause 3-155, Walsh-Healey Public Contracts Act**

*As prescribed in [§ 330.10.30\(dd\)](#), include 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)

### **Clause 3-160, Service Contract Act of 1965, as Amended**

*As prescribed in [§ 325.25.70\(a\)](#) and [§ 330.10.30\(ee\)](#), include 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](#) 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](#) 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)

**Clause 3-165 - RESERVED**

**Clause 3-170 - RESERVED**

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

*As prescribed in [§ 330.10.30\(ff\)](#) and [§ 410.75.65\(c\)](#), include this clause in Section I.*

**Fair Labor Standards Act and Service Contract Act – Price Adjustment  
(Multi-Year and Option Contracts) (JAN 2010)**

- (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 multi-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 multi-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 multi-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)

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

*As prescribed in [§ 330.10.30\(gg\)](#), include 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)

### **Provision 3-185, Evaluation of Compensation for Professional Employees**

*As prescribed in [§ 330.10.30\(hh\)](#), include 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)

**Clause 3-190 – RESERVED**

**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 [§ 325.30.20\(b\)](#) and [§ 330.10.30\(ii\)](#), include 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)



### **Clause 3-200, Service Contract Act – Place of Performance Unknown**

As prescribed in [§ 330.10.30\(jj\)](#), include 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)

### **Clause 3-205, Protest after Award**

As prescribed in [§ 330.10.30\(kk\)](#), include 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)

### **Provision 3-210, Protests**

*As prescribed in [§ 330.10.30\(II\)](#), include 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)

### **Provision 3-300, Central Contractor Registration**

*As prescribed in [§ 330.10.30\(nn\)\(1\)](#), include this clause in Section I.*

#### **Central Contractor Registration (JUL 2007)**

(a) Definitions

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

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

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

"Registered in the CCR database" means that-

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
- (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

- (b)
  - (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
  - (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it may obtain one by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at [www.dnb.com](http://www.dnb.com). Vendors located outside the United States should contact the local Dun and Bradstreet office to request a DUNS number.
- (d) If the Offeror does not become registered in the CCR database within the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g) Change of Name and Novation Agreements:
  - (1) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (i) change the name in the CCR database; (ii) comply with

the requirements of the [Guide, Vol 14, § 740.55](#); and (iii) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

- (2) If the Contractor fails to comply with the requirements of paragraph (g)(1) of this clause, or fails to perform the agreement at paragraph (g)(1)(iii) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(h) Assignment of Claims

The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than the Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

- (i) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at [www.ccr.gov](http://www.ccr.gov) or by calling 1-888-227-2423, or 269-961-5757.

(end)

**Provision 3-305, Payment by Electronic Funds Transfer – Central Contractor Registration**

*As prescribed in [§ 330.10.30\(nn\)\(2\)](#), include this clause in Section G.*

**Payment by Electronic Funds Transfer – Central Contractor Registration  
(JUL 2007)**

(a) Method of Payment

- (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either:

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

(b) Contractor's EFT Information

The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT Payment

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

(d) Suspension of Payment

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

(e) Liability for Uncompleted or Erroneous Transfers

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for -

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

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

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

(f) EFT and Assignment of Claims

If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [§ 740.50](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

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

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

(h) Payment Information

The *[insert court payment office name]* will not provide EFT payment information. Payment information may be obtained by [registering as a payee vendor](#) with the United States Department of the Treasury. Registered vendors may retrieve and/or review check stub advice each time an EFT payment is received.

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

(end)



### **Provision 3-310, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration**

As prescribed in [§ 330.10.30\(nn\)\(3\)](#), include this clause in Section G.

#### **Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (JUL 2007)**

(a) Method of Payment

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

(b) Mandatory Submission of Contractor's EFT Information

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

(c) Mechanisms for EFT Payment

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

(d) Suspension of Payment

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

(e) Liability for Uncompleted or Erroneous Transfers

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

(f) EFT and Assignment of Claims

If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (i) of this clause to the office designated in

paragraph (j), and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

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

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

(h) Payment Information

The *[insert court payment office name]* will not provide EFT payment information. EFT payment information may be obtained by registering as a payee vendor with the United States Department of the Treasury. Registered vendors may retrieve and/or review check stub advice each time an EFT payment is received. The Treasury registration web site is: [www.fms.treas.gov/paid/PAIDfaq.asp](http://www.fms.treas.gov/paid/PAIDfaq.asp).

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

(i) EFT Information

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

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

- (5) The Contractor's bank account number and the type of account (checking, saving, or lockbox).

- (j) Designated Office:

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

(end)

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

*As prescribed in [§ 330.10.30\(nn\)\(4\)](#), include this provision in Section L.*

#### **Submission of Electronic Funds Information with Offer (JUL 2007)**

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

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

(end)

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

*As prescribed in [§ 410.15.20](#), include 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)

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

As prescribed in [§ 410.30.70\(a\)](#), include 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)

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

As prescribed in [§ 410.30.70\(b\)](#), include 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 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)

**Clause 4-15, RESERVED**

**Clause 4-20, Requirements**

As prescribed in [§ 410.30.70\(c\)](#), include 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)

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

*As prescribed in [§ 410.30.70\(d\)](#), include 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)

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

*As prescribed in [§ 410.40.40](#) and [§ 410.45.50](#), include 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)

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

*As prescribed in [§ 410.50.80\(a\)](#), include 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)

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

As prescribed in [§ 410.50.80\(b\)](#), include 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)

### **Clause 4-45, Contract Definitization**

As prescribed in [§ 410.50.80\(c\)](#), include 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 detailed cost information supporting its offer.

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

(1) Definitization target date: \_\_\_\_\_

(2) Offer submission date: \_\_\_\_\_

(3) Beginning of negotiations date: \_\_\_\_\_

(4) Other appropriate dates: \_\_\_\_\_

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

(1) After the contracting officer's determination of price or fee, the contract will be governed by:

(i) all judiciary required clauses on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph (c);

(ii) all clauses required by law as of the date of the contracting officer's determination; and

(iii) any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract will continue in effect, except those that by their nature apply only to a letter contract.

(d) The definitive contract resulting from this letter contract will include a negotiated \_\_\_\_\_ (*contracting officer inserts "firm fixed price" or "total estimated reimbursable cost"*) in no event to exceed \$\_\_\_\_\_ (*contracting officer inserts the proposed amount upon which the award was based*).

(end)

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

*As prescribed in [§ 410.50.80\(d\)](#), include 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) 100 percent of written approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the judiciary's payments to the contractor will not exceed 80 percent of the allowable costs of those subcontracts;
- (2) 100 percent of written approved costs representing cost-reimbursement subcontracts, provided, that the judiciary's payments to the contractor will not exceed 85 percent of the allowable costs of those subcontracts;
- (3) 85 percent of all other written approved costs.

(b) Limitation of Reimbursement

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

(c) Invoicing

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

(d) Allowable Costs

For the purpose of determining allowable costs, the term "costs" includes:

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

(e) Audit

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

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



(end)

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

*As prescribed in [§ 410.65.50](#) and [§ 410.75.65\(b\)](#), include 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 judiciary will pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(end)

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

*As prescribed in [§ 410.70.80\(a\)](#), include 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 the [Guide, Vol 14, Ch 4](#) in effect for the period covered by the indirect cost rate offer.
- (2)
  - (i) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within 90 days after the end of each of its fiscal years, or by a later date approved in writing by the contracting officer. The contractor shall support the cost data and specify the contract and/or subcontract to which the rates apply.
  - (ii) The proposed rates shall be based on the contractor's actual cost experience for that period. The contracting officer or contracting officer's representative and the contractor will establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.
- (3) The contractor and the contracting officer will execute a written understanding setting forth the final indirect cost rates. The understanding will specify:
  - (i) the agreed-upon final annual indirect cost rates;
  - (ii) the bases to which the rates apply;
  - (iii) the periods for which the rates apply;
  - (iv) any specific indirect cost items treated as direct costs in the settlement; and
  - (v) the affected contract an/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding will not change any monetary ceiling, contract

obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

- (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or a period approved in writing by the contracting officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
- (6)
  - (i) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (c)(5) of this clause, the contracting officer may:
    - (A) determine the amounts due to the contractor under the contract; and
    - (B) record this determination in a unilateral modification to the contract.
  - (ii) The determination constitutes the final decision of the contracting officer in accordance with the Disputes clause.

(d) Billing Rates

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

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

(e) Audit

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

- (1) reduced by amounts found by the contracting officer not to constitute allowable costs; or

(2) adjusted for prior overpayments or under-payments.

(f) Final Payment

(1) Upon written approval of a completion invoice or voucher, submitted by the contractor in accordance with paragraph (c)(5) of this clause, and upon the contractor's compliance with all terms of this contract, the judiciary will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The contractor shall pay to the judiciary any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the contractor has been reimbursed by the judiciary. Reasonable expenses incurred by the contractor for securing refunds, rebates, credits, or other amounts are allowable costs if approved in writing by the contracting officer. Before final payment under this contract, the contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) an assignment to the judiciary, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the contractor has been reimbursed by the judiciary under this contract; and

(ii) a release discharging the judiciary, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:

(A) specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) claims (including reasonable incidental expenses) based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that the claims are not known to the contractor on the date of the execution of the release, and that the contractor gives notice of the claims in writing to the contracting officer within six years following the release date or notice of final payment date, whichever is earlier; and

(C) claims for reimbursement of costs, including reasonable incidental expenses, incurred by the contractor under the

patent clauses of this contract, excluding, however, any expenses arising from the contractor's indemnification of the judiciary against patent liability.

(end)

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

*As prescribed in [§ 410.70.80\(b\)](#), include 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)

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

*As prescribed in [§ 410.70.80\(c\)](#), include 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)

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

*As prescribed in [§ 410.70.80\(d\)](#), include 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)

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

*As prescribed in [§ 410.70.80\(e\)](#), include 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)

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

*As prescribed in [§ 410.70.80\(f\)](#), include 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)

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

*As prescribed in [§ 410.70.80\(g\)](#), include 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.
- (l) If the judiciary does not allot sufficient funds to allow completion of the work, the contractor is entitled to a percentage of the fee specified in the schedule equaling the percentage of completion of the work contemplated by this contract.

(end)

**Clause 4-95, RESERVED**

**Clause 4-100, RESERVED**

**Clause 4-105, RESERVED**

**Provision 4-110, RESERVED**

**Clause 4-115, RESERVED**

**Provision 4-120, RESERVED**

**Clause 4-125, RESERVED**

**Clause 4-130, RESERVED**

**Clause 4-135, RESERVED**

**Clause 4-140, RESERVED**

**Clause 4-145, RESERVED**

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

*As prescribed in [§ 410.75.65\(a\)](#), include this clause in Section I.*

**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)

**Provision 4-155, Evaluation of Price Proposal – Multi-Year Contract**

*As prescribed in [§ 410.75.65\(d\)](#), include 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)

**Provision 4-160, Cancellation Period and Ceiling**

*As prescribed in [§ 410.75.65\(e\)](#), include this clause in Section H.*

**Cancellation Period and Ceiling (JAN 2010)**

The cancellation period referred to in the “Cancellation under Multi-Year Contracts” clause ([Clause 4-150](#)) 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:

<b>Contract Year</b>	<b>Cancellation Period*</b>	<b>Cancellation Ceiling*</b>
Contract Year 2		
Contract Year 3		
Contract Year 4		
Contract Year 5		

\* To be completed by Offeror

(end)

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

*As prescribed in [§ 410.75.65\(f\)](#), include 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)

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

*As prescribed in [§ 510.50](#) and [§ 520.75\(c\)](#), include the following clause in Section I.*

##### **Payments under Personal and Professional Services Contracts (AUG 2004)**

- (a) The judiciary will pay the contractor:
  - (1) for 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)

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

*As prescribed in [§ 520.75\(d\)](#), include this clause in Section I.*

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

The contractor acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the contractor's code of ethics, the contractor specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The contractor further agrees to assert any privilege allowed by law and to defend vigorously judiciary rights to confidentiality.

(end)

**Clause 5-10, Inspection of Professional Service**

*As prescribed in [§ 520.75\(e\)](#), include this clause in Section E.*

**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)

**Clause 5-15, RESERVED**

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

*As prescribed in [§ 520.75\(g\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 520.75\(h\)](#), include this provision in Section L.*

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

(a) Definitions. As used in this provision:

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

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

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its offer the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

- (c) The offeror's accounting practices used to estimate uncompensated overtime shall be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.
- (d) Offers that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.
- (e) The offeror shall include a copy of its policy addressing uncompensated overtime with its offer.

(end)

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

*As prescribed in [§ 330.10.30\(mm\)](#) and [§ 530.70.60\(a\)](#), include this clause in Section I.*

#### **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:** *As prescribed in [§ 330.10.30\(nn\)](#), substitute the following for paragraph (a) of the clause:*

- (a) The judiciary authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are **not** established by a judiciary regulatory body, of any invention described in and covered by a United States patent:
  - (1) embodied in the structure or composition of any article the delivery of which is accepted by the judiciary under this contract; or
  - (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the contracting officer directing the manner of performance.

(end)

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

*As prescribed in [§ 530.70.60\(b\)](#), include this clause in Section I.*

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

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

acceptance of the construction work, the contractor shall be paid any unpaid balance of money due under this contract.

- (d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the contractor shall execute and deliver to the contracting officer a release of all claims against the judiciary arising under or by virtue of this contract, other than any claims that are specifically excepted by the contractor from the operation of the release in amounts stated in the release.
- (e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments will not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract including contract modifications for additional products or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(end)

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

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

*As prescribed in [§ 530.70.60\(c\)](#), include this clause in Section I, filling in the dollar amount in (c).*

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

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



estimate of construction cost. The judiciary may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the judiciary may adjust such estimated construction contract price. When offers are not solicited or are unreasonably delayed, the judiciary will prepare an estimate of constructing the design submitted and such estimate will be used in lieu of offers to determine compliance with the funding limitation.

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

(end)

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

*As prescribed in [§ 530.70.60\(d\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 530.70.60\(e\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 530.70.60\(f\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 530.70.60\(g\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 530.70.60\(h\)](#), insert this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 530.70.60\(i\)](#), insert this clause in Section F.*

### **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)

### **Clause 6-1, Performance Bond Requirements**

*As prescribed in [§ 610.20.30\(a\)](#), include this clause in Section I. 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 [Form SF 1418, Performance Bond](#) for the protection of the judiciary in an amount equal to \_\_\_ percent of the original

contract price and a [Form SF 1416, Payment Bond](#) in an amount equal to \_\_\_\_ percent of the original contract price.

- (c) The contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the contracting officer within \_\_\_\_ days, but in any event, before starting work.
- (d) The judiciary may require additional performance and payment bond protection if the contract price is increased. The judiciary may secure the additional protection by directing the contractor to increase the penal amount of the existing bonds or to obtain additional bonds.
- (e) The bonds shall be in the form of a firm commitment, supported by corporate sureties whose names 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  
[www.treas.gov](http://www.treas.gov)

(end)

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

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

(end)

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

*As prescribed in [§ 610.40](#), include this clause in Section L.*

#### **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)

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

*As prescribed in [§ 610.20.50\(a\)](#), include this provision in Section L.*

#### **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)

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

*As prescribed in [§ 610.20.50\(b\)](#), include this clause in Section I.*

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

- (a) If the contractor has deposited assets instead of furnishing sureties for any bond required under this contract and the assets are in the form of checks, currency, or drafts, the contracting officer will hold the assets in an account for the contractor's benefit.

- (b) Upon contract completion, the contractor's funds will be returned as soon as possible, unless the contracting officer determines that part or all of the account is required to compensate the judiciary for costs it incurs as a result of the contractor's delay, default, or failure to perform. In such a case, the entire account will be available to compensate the judiciary.

(end)

### **Clause 6-20, Insurance – Work on a Judiciary Installation**

*As prescribed in [§ 630.20.40\(a\)](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 630.20.40\(b\)](#), insert this clause in Section I.*

#### **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 (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)

### **Clause 6-30, Insurance**

*As prescribed in [§ 630.20.40\(c\)](#), insert this clause in Section I.*

#### **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)

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

*As prescribed in [§ 630.40.50](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 640.30.70\(a\)](#), include this clause in Section I.*

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

(a) Definitions.

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

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

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

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

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

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

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

(end)

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

*As prescribed in [§ 640.30.70\(b\)](#), include this clause in Section I.*

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

- (a) Definitions.

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

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

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

"After-Relieved Tax," as used in this clause, means any amount of federal, state, or local tax or duty, other than an excepted tax, that would otherwise have been

payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

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

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

- (b) Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the contractor is required to pay or bear, including any interest or penalty, if the contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.
- (d) The contract price shall be decreased by the amount of any after-relieved tax. The judiciary shall be entitled to interest received by the contractor incident to a refund of taxes to the extent that such interest was earned after the contractor was paid by the judiciary for such taxes. The judiciary is entitled to repayment of any penalty refunded to the contractor to the extent that the penalty was paid by the judiciary.
- (e) The contract price shall be decreased by the amount of any federal, state, or local tax, other than an excepted tax, that was included in the contract price and that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the contracting officer.
- (f) No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

- (g) The contractor shall promptly notify the contracting officer of all matters relating to federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the contractor at the direction of the contracting officer, including any interest, penalty, and reasonable attorneys' fees.
- (h) The judiciary will furnish evidence appropriate to establish exemption from any federal, state, or local tax when:
  - (1) the contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and
  - (2) a reasonable basis exists to sustain the exemption.

(end)

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

As prescribed in [§ 650.65\(a\)](#), include this provision in Section K.

**Representation of Rights in Data (JAN 2010)**

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

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

(end)

**Clause 6-55, RESERVED**

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

*As prescribed in [§ 650.65\(b\)](#), include this clause in Section I.*

**Rights in Data – General (JAN 2010)**

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

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

“Computer software”:

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

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



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

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

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

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

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

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

“Technical Data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. § 403\(8\)](#)).

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

(b) Allocation of Rights

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

(c) Copyright:

- (1) Data First Produced in the Performance of this Contract
  - (i) Unless provided otherwise in paragraph (d) of this clause, the contractor may, without prior approval of the contracting officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract

and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the contracting officer is required to assert copyright in all other data first produced in the performance of this contract.

- (ii) When authorized to assert copyright to the data, the contractor shall affix the applicable copyright notices of [17 U.S.C. § 401](#) or [§ 402](#), and an acknowledgment of judiciary sponsorship (including contract number).
- (iii) For data other than computer software, the contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the judiciary. For computer software, the contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the judiciary.

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

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

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

(3) Removal of Copyright Notices

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

(d) Release, Publication, and Use of Data

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

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

(e) Unauthorized Marking of Data

- (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the contracting officer may at any time either return the data to the contractor, or cancel or ignore the markings. However, pursuant to [41 U.S.C. § 253d](#), the following procedures shall apply prior to canceling or ignoring the markings.
  - (i) The contracting officer will make written inquiry to the contractor affording the contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
  - (ii) If the contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the contracting officer for good cause shown), the contractor shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
  - (iii) If the contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the contracting officer will consider such written justification and determine whether or not the markings are to be

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

- (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act ([5 U.S.C. § 552](#)) if necessary to respond to a request thereunder.
- (3) Except to the extent the judiciary's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the judiciary removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or Incorrect Markings

- (1) Data delivered to the judiciary without any restrictive markings shall be deemed to have been furnished with unlimited rights. The judiciary is not liable for the disclosure, use, or reproduction of such data.
- (2) If the unmarked data has not been disclosed without restriction outside the judiciary, the contractor may request, within 6 months (or a longer time approved by the contracting officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the contractor's expense. The contracting officer may agree to do so if the contractor:
  - (i) Identifies the data to which the omitted notice is to be applied;
  - (ii) Demonstrates that the omission of the notice was inadvertent;

- (iii) Establishes that the proposed notice is authorized; and
    - (iv) Acknowledges that the judiciary has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.
  - (3) If data has been marked with an incorrect notice, the contracting officer may:
    - (i) Permit correction of the notice at the contractor's expense if the contractor identifies the data and demonstrates that the correct notice is authorized; or
    - (ii) Correct any incorrect notices.
- (g) Protection of Limited Rights Data and Restricted Computer Software
  - (1) The contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the contractor shall:
    - (i) Identify the data being withheld; and
    - (ii) Furnish form, fit, and function data instead.
  - (2) Limited rights data that are formatted as a computer database for delivery to the judiciary shall be treated as limited rights data and not restricted computer software.
- (h) Subcontracting

The contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the contractor's obligations to the judiciary under this contract. If a subcontractor refuses to accept terms affording the judiciary those rights, the contractor shall promptly notify the contracting officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the contracting officer.
- (i) Relationship to Patents or Other Rights

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

(end)

**Alternate I:** As prescribed in [§ 650.65\(c\)](#), insert the following paragraph (g)(3) in the basic clause:

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

Limited Rights Notice (JAN 2010)

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

(End of notice)

**Alternate II:** As prescribed in [§ 650.65\(d\)](#), insert the following paragraph (g)(4) in the basic clause:

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

Restricted Rights Notice (JAN 2010)

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



(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.  
(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (JAN 2010)

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

(End of notice)

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

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

*As prescribed in [§ 650.65\(e\)](#), include this clause in Section I.*

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

(a) Definitions. As used in this clause:

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

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

(b) Allocation of Rights

(1) The judiciary shall have:

- (i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.
    - (ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.
    - (iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.
  - (2) The contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.
- (c) Copyright:
- (1) Data first produced in the performance of this contract.
    - (i) The contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the contracting officer. When copyright is asserted, the contractor shall affix the appropriate copyright notice of [17 U.S.C. § 401](#) or [§ 402](#) and acknowledgment of judiciary sponsorship (including contract number) to the data when delivered to the judiciary, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The contractor grants to the judiciary, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the judiciary.
    - (ii) If the judiciary desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the contracting officer shall direct the contractor to assign (with or without registration), or obtain the assignment of, the copyright to the judiciary or its designated assignee.
  - (2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first

produced in the performance of this contract and that contain the copyright notice of [17 U.S.C. § 401](#) or [§ 402](#), unless the contractor identifies such data and grants to the judiciary, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) Release and Use Restrictions

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

(e) Indemnity

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

(end)

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

*As prescribed in [§ 520.75\(i\)](#) and [§ 650.65\(f\)](#) include this clause in Section I.*

**Work for Hire (JAN 2003)**

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

(end)

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

*As prescribed in [§ 650.65\(g\)](#), include this clause in Section I.*

#### **Rights to Data in an Offer (JAN 2010)**

Except for data contained on pages\_\_\_\_\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the judiciary will have unlimited rights (as defined in 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)

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

*As prescribed in [§ 650.65\(h\)](#), include this clause in Section I.*

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

- (a) Except as otherwise provided in this contract, the contractor grants to the judiciary, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the judiciary, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.
- (b) The contractor shall indemnify the judiciary and its officers, agents, and employees acting for the judiciary against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the judiciary provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the contractor’s consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the contractor by the judiciary and incorporated in data to which this clause applies.

(end)

## Clause 6-85, Commercial Computer Software License

As prescribed in [§ 650.65\(i\)](#), include this clause in Section I

### Commercial Computer Software License (JAN 2010)

- (a) Notwithstanding any contrary provisions contained in the contractor's standard commercial license or lease agreement, the contractor agrees that the judiciary will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with federal laws and Volume 14 of the *Guide to Judiciary Policy*.
- (b)
  - (1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the judiciary except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.
  - (2) The commercial computer software may be:
    - (i) Used or copied for use with the computer(s) for which it was acquired, including use at any judiciary installation to which the computer(s) may be transferred;
    - (ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;
    - (iii) Reproduced for safekeeping (archives) or backup purposes;
    - (iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;
    - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this contract; and
    - (vi) Used or copied for use with a replacement computer.
  - (3) If the commercial computer software is otherwise available without disclosure restrictions, the contractor licenses it to the judiciary without disclosure restrictions.

- (c) The contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

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

(end)

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

*As prescribed in [§ 660.20\(a\)](#), include this clause in Section I.*

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

- (a) The contractor shall report to the contracting officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the contractor has knowledge.
- (b) In the event of any claim or suit against the judiciary on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the contractor shall furnish to the judiciary, when requested by the contracting officer, all evidence and information in the contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the judiciary except where the contractor has agreed to indemnify the judiciary.
- (c) The contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

(end)

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

*As prescribed in [§ 660.20\(b\)](#), include this clause in Section I.*

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

- (a) The contractor shall indemnify the judiciary and its officers, agents, and employees against liability, including costs, for infringement of any United States

patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under [35 U.S.C. § 181](#)) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the judiciary of such supplies or construction work.

- (b) This indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the judiciary of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:
  - (1) An infringement resulting from compliance with specific written instructions of the contracting officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor;
  - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
  - (3) A claimed infringement that is unreasonably settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

(end)

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

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

---

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

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

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

---

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

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

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

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

*As prescribed in [§ 660.20\(f\)](#), include this clause in Section I.*

**Waiver of Indemnity (JAN 2010)**

Any provision or clause of this contract to the contrary notwithstanding, the judiciary hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the contractor with respect to such patents:

---

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

(end)

**Clause 7-1, Contract Administration**

*As prescribed in [§ 715.55\(a\)](#), include this clause in Section G.*

**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)

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

*As prescribed in [§ 715.55\(b\)](#), include this clause in Section G.*

#### **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)

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

As prescribed in [§ 715.55\(c\)](#), include this clause in Section G.

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

- (a) The contractor's representative to be contacted for all contract administration matters is as follows (*contractor complete the information*):

Name:  
Address:  
Telephone:  
E-mail:  
Fax:

- (b) The contractor's representative shall act as the central point of contact with the judiciary, shall be responsible for all contract administration issues relative to this contract, and shall have full authority to act for and legally bind the contractor on all such issues.

(end)

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

As prescribed in [§ 715.55\(d\)](#), include this clause in Section I.

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

- (a) When contractor personnel are performing contract work at a judiciary facility, they shall comply with all rules and regulations of the facility, including, but not limited to, rules and regulations governing security, controlled access, personnel clearances and conduct with respect to health and safety and to property at the site, regardless of whether or not title to such property is vested in the judiciary. The facilities to which the contractor has access belong to the judiciary and will not at any time be considered "Judiciary Property" furnished to the contractor.

- (b) The contractor and its employees shall only conduct business covered by the contract during periods paid for by the judiciary, and will not conduct any other business on judiciary premises.
- (c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance and integrity. It is the contractor's responsibility to take disciplinary action with respect to its employees as may be necessary. The contractor is also responsible for ensuring that its employees do not disturb papers on desks, open desk drawers or cabinets, or use judiciary property (such as, but not limited to, telephones or copiers) except as authorized.

(end)

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

*As prescribed in [§ 330.10.30\(o\)](#) and [§ 715.55\(e\)](#), include this clause in Section I.*

#### **Security Requirements (JAN 2010)**

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

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

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

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

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

"PIV Card" means Personal Identity Verification (PIV) Card, a judiciary-issued identification credential (identification badge).

- (b) Requirements.

Contractor employees working on this contract must complete such forms as may be necessary for security purposes or other reasons. Completed forms shall be submitted as directed by the Contracting Officer's Technical

Representative (COTR). Depending upon the level of access required to judiciary facilities or IT resources for performance of the work, contractor employees may be subject to any of the following types of security checks:

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

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

(c) Exemption.

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

(d) PIV Cards.

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

(e) Control of access.

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

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

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

(end)

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

*As prescribed in [§ 715.55\(f\)](#), include this clause in Section I.*

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

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

(b) If due to the fault, negligent acts (whether of commission or omission) and/or dishonesty of the contractor or its employees, any judiciary-owned or controlled

property is lost or damaged as a result of the contractor's performance of this contract, the contractor shall be responsible to the judiciary for such loss or damage, and the judiciary, at its option, may, in lieu of requiring reimbursement therefor, require the contractor to replace at its own expense, all property lost or damaged.

(c) Hold Harmless and Indemnification Agreement

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

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

(e) Judiciary's Right of Recovery

Nothing in the above paragraphs will be considered to preclude the judiciary from receiving the benefits of any insurance/bonds the contractor may carry which provides for the indemnification of any loss or destruction of, or damages to, property in the custody and care of the contractor where such loss, destruction or damage is to judiciary property. The contractor shall do nothing to prejudice the judiciary's right to recover against third parties for any loss, destruction of, or damage to, judiciary property, and upon the request of the contracting officer will, at the judiciary's expense, furnish to the judiciary all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the judiciary) in obtaining recovery.

(f) Judiciary Liability

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

(end)

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

*As prescribed in [§ 715.55\(g\)](#), include this clause in Section I.*

### **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)

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

*As prescribed in [§ 715.55\(h\)](#), include this clause in Section I.*

### **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 unauthorized disclosure. Such acknowledgments are subject to the review of the contracting officer.
- (d) Performance of this contract may require the contractor to access and use data and information, proprietary to the judiciary or to a judiciary contractor, which is of such a nature that its dissemination or use, other than in performance of this contract, would be adverse to the interests of the judiciary and/or others.
- (e) Contractor and/or contractor personnel shall not divulge or release data or information developed or obtained in performance of this contract until made public by the judiciary, except as authorized by the contracting officer. The contractor shall not use, disclose, or reproduce proprietary data which bears a restrictive legend, other than as required in the performance of this contract. Nothing herein will preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the judiciary between the contractor and the data owner which provides for greater rights to the contractor.
- (f) The judiciary and contractor agree that neither expects the performance under this contract to involve reporting or handling of classified information or materials. Either party shall notify the other promptly in writing if the expectation of that party changes, and shall include in the notice reasons therefore. If there are sealed records, in camera proceedings or grand jury matters, the contractor shall consult with the contracting officer as to the proper safeguarding, security, and secrecy of the original notes and transcript orders.
- (g) The contracting officer will advise the contractor whenever the judiciary places a service order which will require classified information or materials. The



contractor will have the right to decline to provide services, in which event such services shall be outside the scope of this contract.

- (h) The contractor shall hold inviolate and in strictest confidence any and all information of an official nature not for inclusion in the document, any information which the presiding judicial official designates as "off the record" and all classified information and material.
- (i) The contractor shall classify, safeguard, and otherwise act with respect to all classified information and material in accordance with applicable law and requirements of the contracting officer. The contractor shall not permit any individual to have or gain access to the classified information or material without written permission of the contracting officer, except as access may be necessary for authorized employees of the contractor to perform services under this contract.
- (j) Notwithstanding any other provision of this contract, the contractor may deliver transcript containing classified material or information only to the judiciary. The contractor shall never sell or deliver such document to a private person without the express written permission of the contracting officer. Notwithstanding any other provision of this contract, the contractor shall never keep a copy of a document containing classified material or information after the delivery of the original to the contracting officer.

(end)

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

*As prescribed in [§ 715.55\(i\)](#), include this clause in Section I.*

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

- (a) The judiciary and the contractor understand and agree that the services to be delivered under this contract by the contractor to the judiciary are non-personal services. The parties recognize and agree that no employer-employee or master-servant relationships exist or will exist under the contract between the judiciary and the contractor and/or between the judiciary and the contractor's employees. It is therefore, in the best interest of the judiciary to afford the parties a full and complete understanding of their respective obligations.
- (b) The contractor and/or the contractor's personnel under this contract shall not:

- (1) be placed in a position where they are appointed or employed by a federal officer, or are under the supervision, direction, or evaluation of a federal officer;
- (2) be placed in a staff or policy making position;
- (3) be placed in a position of command, supervision, administration or control over judiciary personnel or the personnel of other contractors, or become a part of the judiciary organization;
- (4) be used for the purpose of avoiding manpower ceilings or other personnel rules and regulations.

(c) Employee Relationship

- (1) The services to be performed under this contract do not require the contractor or its employees to exercise personal judgement and discretion on behalf of the judiciary. The contractor's employees will act and exercise personal judgement and discretion on the behalf of the contractor, as directed by the contractor's supervisory personnel, and in accordance with the contract terms and conditions.
- (2) Rules, regulations, directions, and requirements issued by the judiciary under the judiciary's responsibility for good order, administration, security, and safety are applicable to all personnel physically located on-site, inclusive of contractor personnel who are required under the terms and conditions of this contract to be so located. This is not to be construed or interpreted to establish any degree of judiciary control which is inconsistent with a non-personal services contract.

(end)

**Clause 7-45, Travel**

*As prescribed in [§ 715.55\(j\)](#), include this clause in Section H.*

**Travel (JAN 2010)**

The contractor may propose travel costs based on Judiciary Travel Regulations (JTR) if travel is allowable and required by the contract. Proposed per diem and automobile expense will be based on JTR.

(end)

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

*As prescribed in [§ 715.55\(k\)](#), include this clause in Section H.*

### **Parking (JAN 2010)**

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

(end)

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

*As prescribed in [§ 715.55\(l\)](#), include this clause in Section H.*

### **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)

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

*As prescribed in [§ 720.10.40\(a\)](#), include this provision in Section L.*

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

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

(end)

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

*As prescribed in [§ 720.10.40\(b\)](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 720.10.40\(c\)](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 725.10.40\(a\)](#), include this clause in Section I.*

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

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

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

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

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

- (b) This clause does not apply to subcontracts for special test equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced purchase/delivery/task orders), and only if required in accordance with paragraph (d) or (e) of this clause.

- (d) If the contractor does not have a written approved purchasing system, consent to subcontract is required for any subcontract that:
- (1) is of the cost-reimbursement, time-and-materials, or labor-hour type; or
  - (2) is fixed price and exceeds either the judiciary's small purchase threshold or five percent of the total estimated cost of the contract.
- (e) If the contractor has a written approved purchasing system, the contractor nevertheless shall obtain the contracting officer's written consent before placing the following contracts:
- 
- 
- (f) (1) The contractor shall notify the contracting officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
- (i) a description of the products or services to be subcontracted;
  - (ii) identification of the type of subcontract to be used;
  - (iii) identification of the proposed subcontractor;
  - (iv) the proposed subcontract price;
  - (v) the subcontractor's detailed cost information, if required by other contract provisions;
  - (vi) a negotiation memorandum reflecting:
    - (A) the principal elements of the subcontract price negotiations;
    - (B) the most significant considerations controlling establishment of initial or revised prices;
    - (C) the reason detailed cost information was or was not required;
    - (D) the extent, if any, to which the contractor did not rely on the subcontractor's detailed cost information in determining the price objective and in negotiating the final price;

- (E) the extent to which it was recognized in the negotiation that the subcontractor's detailed cost information was not accurate, complete, or current; the action taken by the contractor and the subcontractor; and the effect of any such defective cost information on the total price negotiated;
  - (F) the reasons for any significant difference between the contractor's price objective and the price negotiated; and
  - (G) a complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the contractor has a written approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the contractor nevertheless shall notify the contracting officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the small purchases threshold or five percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by the contracting officer to any subcontract nor approval of the contractor's purchasing system will constitute a determination:
  - (1) of the acceptability of any subcontract terms or conditions;
  - (2) of the allowability of any cost under this contract; or
  - (3) to relieve the contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, or any fee payable under cost-reimbursement type subcontracts will not exceed the fee limitations.
- (i) The contractor shall give the contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor that, in the opinion of the contractor, may result in litigation related in any way to this contract, with respect to which the contractor may be entitled to reimbursement from the judiciary.



- (j) The judiciary reserves the right to review the contractor's purchasing system.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations.

(end)

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

*As prescribed in [§ 725.10.40\(b\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 730.20.20](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 220.10.70\(d\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 220.10.70\(e\)](#), include this clause in Section I.*

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

- (a) Except as provided in paragraphs (b) and (c) this clause, and except for remedies expressly provided elsewhere in this contract, the contractor shall not be liable for loss of or damage to property of the judiciary (excluding the products delivered under this contract) that:
  - (1) occurs after judiciary acceptance of the products delivered under this contract; and
  - (2) results from any defects or deficiencies in the products.
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, the products results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (1) all or substantially all of the contractor's business;
  - (2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed;or

- (3) a separate and complete major industrial operation connected with the performance of this contract.
  
- (c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through purchase or use of the products required to be delivered under this contract or the contractor's performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring after judiciary acceptance of, and resulting from any defects or deficiencies in, the products delivered under this contract.

(end)

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

*As prescribed in [§ 220.10.70\(f\)](#), include this clause in Section I.*

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

- (a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the contractor shall not be liable for loss of or damage to property of the judiciary that:
  - (1) occurs after judiciary acceptance of services performed under this contract; and
  - (2) results from any defects or deficiencies in the services performed or materials furnished.
  
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (1) all or substantially all of the contractor's business;
  - (2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed;or

- (3) a separate and complete major industrial operation connected with the performance of this contract.
- (c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through the contractor's performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring after judiciary acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(end)

### **Clause 7-105 - RESERVED**

### **Clause 7-110, Bankruptcy**

*As prescribed in [§ 735.60.40](#), include this clause in Section I.*

#### **Bankruptcy (JAN 2003)**

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

(end)

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

*As prescribed in [§ 220.50.90\(a\)](#), include the following clause in Section I.*

#### **Availability of Funds (JAN 2003)**

Funds are not presently available for this contract. The judiciary's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part

of the judiciary for any payment may arise until funds are made available to the contracting officer for this contract and until the contractor receives notice of such availability, to be confirmed in writing by the contracting officer.

(end)

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

*As prescribed in [§ 220.50.90\(b\)](#), include the following clause in Section I.*

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

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

(end)

**Clause 7-125, Invoices**

*As prescribed in [§ 740.20.30](#), include this clause in Section G.*

**Invoices (JAN 2010)**

- (a) Invoices shall be submitted to the address (physical or e-mail) specified in this contract and in accordance with any schedule for payments set forth elsewhere under this contract.
- (b) The office that will make payments due under this contract will be designated in the contract at the time of contract award.
- (c) To constitute a proper invoice, the billing document shall include the following information and/or attached documentation:
  - (1) name of business concern and such business's Taxpayer Identification Number;
  - (2) period(s) covered by invoice and invoice date;

- (3) purchase order or contract number or other authorization for delivery of property or services, e.g., delivery/task order number for orders under indefinite delivery contracts ;
- (4) for each line item — general description of product delivered or services rendered, measured unit, and associated price;
- (5) 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 [§ 520.75\(f\)](#), and when applicable, the contracting officer must substitute the following paragraph (c)(4) for paragraphs (c)(4) of the basic Clause 7-125.*

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

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

(end)

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

*As prescribed in [§ 740.30.30](#), include this clause in Section I.*

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

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

(end)

**Clause 7-135, Payments**

*As prescribed in [§ 740.30.50\(a\)](#), include this clause in Section I.*

**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)

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

*As prescribed in [§ 740.30.50\(b\)](#), include this clause in Section I.*

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

- (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with

the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

- (b) In connection with any discount offered for prompt payment, time will be computed from the date of the invoice. If the contractor has not placed a date on the invoice, the due date will be calculated from the date the designated billing office receives a proper invoice, provided the judiciary annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment will be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when judiciary offices are closed and judiciary business is not expected to be conducted, payment may be made on the following business day.

(end)

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

*As prescribed in [§ 740.30.50\(c\)](#), include this clause in Section I.*

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

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

(end)



## Clause 7-150, Extras

As prescribed in [§ 740.30.50\(d\)](#), include the following clause in Section I.

### Extras (JAN 2003)

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

(end)

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

As prescribed in [§ 740.30.50\(e\)](#), include this clause in Section I.

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

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

#### Certificate of Final Indirect Costs

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

- (1) all costs included in this offer \_\_\_\_\_ (*identify offer and date*) to establish final indirect cost rates for \_\_\_\_\_ (*identify period covered by rate*) are allowable in accordance with the cost principles in the [Guide, Vol 14, Ch 4](#) applicable to the contracts to which the final indirect cost rates will apply; and

- (2) this offer does not include any costs which are expressly unallowable under cost principles of the [Guide, Vol14, Ch 4](#).

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

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

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

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

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

(end)

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

*As prescribed in [§ 740.40.50\(a\)](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 740.40.50\(b\)](#), include this clause in Section I.*

#### **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 the [Guide, Vol 14, Ch 4](#).
- (d) If the contracting officer determines that a cost submitted by the contractor in its offer is expressly unallowable, the contractor shall be assessed a penalty equal to:
  - (1) the amount of the disallowed cost allocated to this contract; plus
  - (2) simple interest, to be computed:
    - (i) on the amount the contractor was paid on a billing payment in excess of the amount to which the contractor was entitled; and
    - (ii) using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the contracting officer determines that a cost submitted by the contractor in its offer includes a cost previously determined to be unallowable for that contractor, then the contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions.
- (g) In certain cases, the contracting officer may waive the penalties in paragraph (d) or (e) of this clause. The contracting officer will provide a written determination of the reasons for the waiver in the contract file.

- (h) Payment by the contractor of any penalty assessed under this clause does not constitute repayment to the judiciary of any unallowable cost which has been paid by the judiciary to the contractor.

(end)

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

*As prescribed in [§ 740.40.50\(c\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 740.50.40\(a\)](#), include this clause in Section I.*

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

- (a) The contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

- (b) Any assignment or reassignment authorized under this clause will cover all unpaid amounts payable under this contract, and will not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The contractor shall not furnish or disclose to any assignee under this contract any sensitive or classified document (including this contract) or information related to work under this contract unless the contracting officer authorizes such action in writing.

(end)

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

*As prescribed in [§ 740.50.40\(b\)](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 745.40.40\(a\)](#), include this clause in Section I.*

#### **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)

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

*As prescribed in [§ 745.40.40\(b\)](#), include this clause in Section I.*

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

The contracting officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds the judiciary's small purchase threshold. The contractor, for each change or series of related

changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the contracting officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(end)

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

*As prescribed in [§ 745.45.55\(a\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 745.45.55\(b\)](#), include the following clause in Section F.*

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

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

(end)

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

*As prescribed in [§ 745.45.55\(c\)](#), include this clause in Section I.*

### **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)

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

*As prescribed in [§ 745.45.55\(d\)](#), include this clause in Section I.*

##### **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)

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

*As prescribed in [§ 745.55.40\(i\)](#), include this clause in Section I.*

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

- (a) The contractor shall make the following notifications in writing:
- (1) when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the contracting officer within 30 days;
  - (2) the contractor shall also notify the contracting officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

- (b) The contractor shall:
  - (1) maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) provide the contracting officer or designated representative ready access to the records upon request;
  - (3) ensure that all-individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and
  - (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- (c) The contractor shall include the substance of this clause in all subcontracts under this contract.

(end)

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

*As prescribed in [§ 755.20.60\(a\)](#), include this clause in Section I.*

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

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

- (3) terminate all orders and subcontracts to the extent they relate to the work terminated;
  - (4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary shall have the right to settle or to pay any termination settlement offer arising out of those terminations;
  - (5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts; the written approval or ratification will be final for purposes of this clause;
  - (6) as directed by the contracting officer, transfer title and deliver to the judiciary:
    - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary;
  - (7) complete performance of the work not terminated;
  - (8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the judiciary has or may acquire an interest;
  - (9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (b)(6) of this clause, *provided*, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the judiciary under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period.

- (d) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept title to those items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.
- (e) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after the 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the contractor and contracting officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract will be modified, and the contractor paid the agreed amount. Paragraph (g) of this clause will not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the contractor and the contracting officer fail to agree on the whole amount to be paid because of the termination of work, the contracting officer will pay the contractor amounts determined by the contracting officer as follow, but without duplication of any amounts agreed on under paragraph (f) of this clause:
  - (1) the contract price for completed products or services accepted by the judiciary (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges;

- (2) the total of:
  - (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to products or services paid or to be paid under paragraph (g)(1) of this clause;
  - (ii) the cost of settling and paying termination settlement offers under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
  - (iii) a sum, as profit on subdivision (g)(2)(i) of this clause, determined by the contracting officer; in effect on the date of the contract, to be fair and reasonable; however, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the contracting officer will allow no profit under this subdivision (g)(2)(iii) and will reduce the settlement to reflect the indicated rate of loss.
  
- (3) the reasonable costs of settlement of the work terminated, including:
  - (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement offers and supporting data;
  - (ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
  
- (h) Except for normal spoilage, and except to the extent that the judiciary expressly assumed the risk of loss, the contracting officer will exclude from the amounts payable to the contractor under paragraph (g) of this clause, the fair value, as determined by the contracting officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the judiciary or to a buyer.
  
- (i) The cost principles and procedures of the [Guide, Vol 14, Ch 4](#), in effect on the date of this contract, will govern all costs claimed, agreed to, or determined under this clause.
  
- (j) The contractor shall have the right of appeal under the Disputes clause, from any determination made by the contracting officer under paragraph (e), (g), or (l) of

this clause, except that if the contractor has failed to submit the termination settlement offer or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request an extension of time, there is no right of appeal.

- (k) In arriving at the amount due the contractor under this clause, there will be deducted:
  - (1) all unliquidated advance or other payments to the contractor under the terminated portion of this contract;
  - (2) any claim which the judiciary has against the contractor under this contract; and
  - (3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the judiciary.
- (l) If the termination is partial, the contractor may file an offer with the contracting officer for an equitable adjustment of the price(s) of the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any offer by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the contracting officer.
- (m)
  - (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under [P. L. 92-41 \(85 Stat. 97\)](#). Interest will be computed for the period from the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.
- (n) Unless otherwise provided in this contract, or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other

evidence bearing on the Contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the judiciary, at the contractor's office, at all reasonable times, without any direct charge. If approved in writing by the contracting officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(end)

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

*As prescribed in [§ 755.20.60\(b\)](#), include this clause in Section I.*

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

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

(end)

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

*As prescribed in [§ 755.20.60\(c\)](#), include this clause in Section I.*

#### **Termination (Cost-Reimbursement) (JAN 2010)**

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

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

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

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

- (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under [P. L. 92-41 \(85 Stat. 97\)](#) 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 [§ 755.20.60\(d\)](#), 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)

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

*As prescribed in [§ 755.25.60\(a\)](#), include this clause in Section I.*

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

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

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

(end)

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

*As prescribed in [§ 755.25.60\(b\)](#), include this clause in Section I.*

#### **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)