

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D. C. 20544

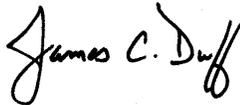
Date: 9/30/10

## GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-001 VOLUME/PART 14 CHAPTER(S) 1, 3

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

**FROM:** James C. Duff



**RE:** **PROCUREMENT**

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

[Chapter 1 – Overview](#)

[Chapter 1, Appendix 1B – Solicitation Provisions and Contract Clauses](#)

[Chapter 3 – Purchasing Methods](#)

*Chapter 1:* Revised to reflect the Director's direct delegation to the Procurement Executive (PE).

*Chapter 1, Appendix 1B:* Deletes guidance duplicated in Volume 14, Appendix 1C on citing the Uniform Contract Format and revises the following clauses or provisions:

- Clause 3-3 - Provision 3-70 moved from Paragraph (b) to Paragraph (a); Clause 7-125 added to Paragraph (b) to ensure that purchase orders have minimal required invoice information.
- Added to Provision 3-5 - Paragraph (g) to require vendors to indicate women-owned and minority-owned status. Congress has requested this information.

*Chapter 1, Appendix 1B (continued):*

- Removed from Clause 3-65 - the reference to the Small Business Act. The Act does not apply to the judiciary.
- Deleted from Provision 3-30's prescriptive text - guidance to change certain words when using the provision in a Request for Quotations (RFQ). This provision is required only for solicitations exceeding the small purchase threshold and RFQs are not authorized at that dollar threshold.
- Provision 3-100 - Changed Paragraph (c)(4) and added Alternate III. The default in the current version allows vendors to propose less than all services and products being solicited. Alternate III narrows this provision to those unusual occasions when it is appropriate.
- Provision 3-210 - Eliminated the fill-in to allow incorporation by reference in Clause 3-3 without any additional information being required.
- Clause 6-60 - Deleted the reference to 41 U.S.C. § 253d in paragraph (e)(1) and paragraph (e)(2) regarding the Freedom of Information Act, and re-numbered paragraph (e)(3). These statutory references do not apply to the judiciary.

This transmittal also provides official notification that minor changes were made to Clause 6-90 and Clause 7-35 of Appendix 1B in April 2010, and both clauses have an APR 2010 version date.

*Chapter 3:* Revisions include changes to required procedures and documentation regarding vendor responsibility determinations (§ 320.20); instructions for the use of the new Alternate III to Provision 3-100 (§ 330.10.30(t)); and changes to the prescriptive text for various CCR clauses and provisions (§ 330.10.30(nn)).

The substantive changes are detailed in the Redline Comparison below. All other changes are technical corrections (e.g., correction of an incorrect Guide reference or a typo, insertion of a version date on all alternate clauses/provisions where there has been no text change, correction where a clause was incorrectly identified as a provision or vice versa).

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

## REDLINE COMPARISON REFLECTING CHANGES

### § 120.20 Authorized Delegations

#### § 120.20.10 The Director

- (a) Delegation to the ~~Assistant Director~~ Procurement Executive

The Director has delegated unlimited judiciary procurement authority ~~at the Executive Management Group level at the AOUSC to the Assistant Director, Office of Internal Services (OIS), within the applicable regulatory and statutory requirements, to the Procurement Executive.~~

[. . .]

- (c) Delegation Exclusions

Notwithstanding the delegation thresholds established herein, the Director does not delegate any of the following actions to chief judges or federal public defenders, and they must be forwarded to the Procurement Executive (PE) for coordination and response:

- responses to protests at any level;
- decisions on disputes arising out of, or pertaining to, procurement actions; or
- ratifications of unauthorized procurement actions above delegated limits. **See also:** [§ 160 \(Ratification\)](#).

#### § 120.20.20 ~~The Assistant Director, OIS, AOUSC~~ Reserved

~~The Assistant Director has re-delegated authority at the Senior Staff level to the PE, Chief of the AO Procurement Management Division (PMD), to direct and manage the procurement activities of federal judiciary organizations subject to this Volume of the Guide. See also: § 120.20.30 (Procurement Executive).~~

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

~~As~~ Include the following provision as prescribed in [Appx B, § B.2.1.\(a\)](#), ~~include this provision in Section L.~~

##### Solicitation Provisions Incorporated by Reference (~~AUG 2004~~ SEP 2010)

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, accessed electronically at this address: <http://www.uscourts.gov/procurement.aspx>.

(end)

**REDLINE COMPARISON REFLECTING CHANGES**

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

~~As include the following clause as prescribed in Appx B, § B.2.1.(b), include this clause in Section I.~~

**Clauses Incorporated by Reference (~~OCT 2006~~SEP 2010)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:  
<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/Procurement/JudiciaryProvisions/procurement.aspx>.

(end)

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

~~As include the following clause 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~~SEP 2010)**

(a) The following provisions are incorporated by reference into the request for quotations (RFQ):

~~(1)~~ Provision 3-70, Determination of Responsibility (JAN 2003)

~~(42)~~ Provision 3-210, Protests (AUG 2004SEP 2010)

[. . .]

(b) The contractor shall comply with the following clauses incorporated by reference:

[. . .]

~~(3)~~ Clause 3-70, Determination of Responsibility (JAN 2003)

[. . .]

~~(76)~~ Clause 7-35, Disclosure or Use of Information (AUG 2004PR 2010)

[. . .]

~~(8)~~ Clause 7-125, Invoices (JAN 2010)

(c) The contractor shall comply with the following clauses, incorporated by reference, unless the stated circumstances do not apply:

[. . .]

(2) Clause 6-60, Rights in Data - General (JANSEP 2010) (Applies if data will be produced, furnished, or acquired under the purchase order.)

[. . .]

(5) Clause 2-115, Alt I (OCT 2006) (Applies if advance payment is authorized for photocopy equipment maintenance.)

REDLINE COMPARISON REFLECTING CHANGES

**Provision 3-5, Taxpayer Identification and Other Offeror Information**

*As Include the following provision as prescribed in § 325.30.20(b) and § 330.10.30(a); include this provision in Section K.*

**Taxpayer Identification and Other Offeror Information (~~JAN 2003~~SEP 2010)**

[ . . . ]

(g) Contractor representations.

Definitions. As used in this provision—

“Women-owned business concern” means a business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more women.

“Minority-owned business concern” means a business concern (1) which is at least 51 percent owned by one or more individuals within one or more of the categories listed below; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more individuals within one or more of the categories listed below; and (2) whose management and daily business operations are controlled by one or more individuals within one or more of the categories listed below.

Black American

Hispanic American

Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians)

Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru)

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)

Representations

The offeror represents as part of its offer that it [ ] is, [ ] is not minority-owned business concern.

The offeror represents as part of its offer that it [ ] is, [ ] is not a women-owned business concern.

(end)

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

*As Include the following provision 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”.*

REDLINE COMPARISON REFLECTING CHANGES

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

~~As~~Include the following clause as prescribed in § 330.10.30(m),~~include this clause in Section I.~~

Limitation on Payments to Influence Certain Federal Transactions (~~JAN 2003~~SEP 2010)

[. . .]

(b) Prohibitions

[. . .]

(3) The prohibitions of the Act do not apply under the following conditions:

[. . .]

(i) Judiciary and legislative liaison by own employees.

[. . .]

(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.~~

Provision 3-100, Instructions to Offerors

~~As~~Include the following provision as prescribed in § 330.10.30(t),~~include this provision in Section L.~~

Instructions to Offerors (~~JAN 2003~~SEP 2010)

[. . .]

(c) Submission, Modification, Revision, and Withdrawal of Offers

[. . .]

(4) Unless otherwise specified in the solicitation, ~~the offeror may propose to provide any item or combination of~~ on less than all items solicited will not be considered.

[. . .]

Alternate III (SEP 2010): As prescribed in § 330.10.30(t)(3), replace paragraph (c)(4) of the basic clause with the following, if the judiciary will consider offers that do not include all items solicited.

(c)(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(end)

REDLINE COMPARISON REFLECTING CHANGES

Provision 3-210, Protests

~~As~~Include the following provision as prescribed in § 330.10.30(II)~~; include this provision in Section L.~~

**Protests (~~AUG 2004~~SEP 2010)**

- (c) ~~Unless stated otherwise elsewhere in this solicitation, P~~protests that are filed directly with the judiciary, and copies of any protests that are filed with an external forum, ~~will~~shall be served on the contracting officer (~~addressed as follows~~) ~~by obtaining written~~at the Issuing Office address on the standard form, if any, or elsewhere in this solicitation. Written and dated acknowledgment of receipt from ~~\_\_\_\_\_.~~ ~~[contracting officer designate the official or location where a protest may be served on the contracting officer.]~~must be obtained from the Contracting Officer issuing this solicitation, or authorized designee.
- (d) The copy of any protest shall be received in the office designated above within one day of filing a protest with an external forum.

(end)

Clause 6-60, Rights in Data – General

~~As~~Include the following clause as prescribed in § 650.65(b)~~; include this clause in Section I.~~

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

- (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, t~~The following procedures shall apply prior to canceling or ignoring the markings:;  
[. . .]

~~(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.~~

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

~~As~~Include the following clause as prescribed in § 660.20(a)~~; include this clause in Section I.~~

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

[. . .]

- (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~~judiciary small purchase threshold.

## REDLINE COMPARISON REFLECTING CHANGES

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

~~As include the following clause as prescribed in § 715.55(h), include this clause in Section I.~~

#### **Disclosure or Use of Information (AUG 2004 PR 2010)**

- (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."

### § 320.20 Determining Responsibility or Non-Responsibility

#### § 320.20.10 Determination

The CO must make an affirmative ~~written~~ determination of responsibility according to the provisions of § 320.10 before awarding any contract, ~~except for awards of \$25,000 or less (for awards using small purchase procedures, see: § 325). In the absence of information clearly showing,~~

#### § 320.20.20 Required Documentation

~~A written determination is required in the event that a prospective contractor meets applicable standards of responsibility, the CO must make a written determination of non-responsibility.~~

#### ~~§ 320.20.20 Documentation~~

~~Documents is found to be non-responsible. All documents and reports supporting related to such a determination of responsibility or non-responsibility, including any pre-award survey reports (see: § 320.20.50), must be included in the procurement file.~~

#### § 320.20.30 Obtaining Information

Before making a determination of responsibility, the CO must possess or obtain information sufficient to be satisfied that at the prospective contractor currently meets applicable standards of responsibility. ~~Sources of~~ At a minimum, for open market and sole source awards, the CO must check GSA's Excluded Parties List System (EPLS) (see: § 320.30). (Note: when ordering against another agency's contract, such as GSA schedule orders, orders under the NASA SEWP contracts, etc., the CO may rely upon the other agency's determination of responsibility in awarding the contract.) Other sources of responsibility information include:

- ~~(a) GSA's consolidated list of contractors debarred, suspended, or declared ineligible by other federal agencies (see: § 320.30);~~
- (b) records and experience data, including verifiable knowledge from judiciary personnel in purchasing offices, audit offices, and from other agency's contracting offices;
- (c) the prospective contractor, including offer information, questionnaire replies, financial data, information on production equipment, and personnel information; and
- (d) publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.

## REDLINE COMPARISON REFLECTING CHANGES

### § 330.10.30 Provisions and Clauses

The CO will include the following clauses and provisions in solicitations exceeding the judiciary's small purchase threshold (see: [§ 325.10](#)). Include the listed provisions or clauses in all solicitations and contracts unless the prescription indicates otherwise.

[. . .]

(t) [Provision 3-100, Instructions to Offerors](#) is included in all solicitations.

[. . .]

~~(3) Alternate III is included if the judiciary would be willing to consider offers which do not include all items solicited and make multiple awards.~~

[. . .]

(nn) Court organizations with the capability of making payment by electronic funds transfer (EFT) will incorporate the following clauses as indicated:

(1) [Clause 3-300, Central Contractor Registration](#) is included in solicitations and contracts except when:

(A) the contract is awarded under circumstances of ~~usual~~urgent and compelling need;

[. . .]

(2) [Clause 3-305, Payment by Electronic Funds Transfer – Central Contractor Registration](#) is included in solicitations and contracts ~~that include Clause 3-300, when:~~

~~(A) the contract is awarded under circumstances of usual and compelling need;~~

~~(B) the contractor is a foreign vendor;~~

~~(C) awards under \$5,000 which do not use EFT for payment.~~

(3) [Clause 3-310, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration](#) is included in contracts when a critical sole source provider of goods or services refuses to register in CCR, but has provided Electronic Funds Transfer information for payment directly to the judiciary.

(4) [Provision 3-315, Submission of Electronic Funds Transfer Information with Offer](#) is included in solicitations ~~and contracts when making awards under the~~ urgent and compelling circumstances ~~exception under § 330.10.30 (oo) (1) and (2). Contracting officers will modify any~~require award to be made without regard to whether or not the awardee is registered in CCR. The resulting contract ~~to incorporate must include~~ either [Clause 3-305, Payment by Electronic Funds Transfer – Central Contractor Registration](#) as soon as practical after award, if the awardee is registered in CCR, or [Clause 3-310, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration](#), if the awardee is not registered in CCR.