

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D. C. 20544

Date: 2/10/11

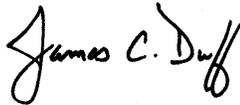
GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-002 VOLUME/PART 14 CHAPTER(S) 1, 5, 7

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 5 – Special Categories of Procurements](#)

[Chapter 7 – Contract Administration](#)

Chapter 1 was changed to clarify that the Judiciary's Procurement Executive (PE) is the Chief of the Procurement Management Division; merge § 120.20.10(c) with § 120.20.10(b), as the listed exclusions do not apply to the PE delegation in paragraph (a); and incorporate the continuing education requirements for Level 3 Contract Officers Certification Program delegations, previously only stated in Appendix 1F.

In Chapter 5, redundant guidance on the use of the labor-hour contract type for experts and consultants was replaced by a link to the relevant Chapter 4 paragraph on the use of this contract type, and PE approval requirements for Interagency Agreement and Memorandum of Understanding documents at the Administrative Office were removed.

In Chapter 7, requirements for a written certification or memo of funds availability were removed, as this is readily ascertainable from FAS₄T, which all court units have now implemented. Also, situations in which a sole proprietor changes from using a Social Security Number to using an Employer Identification Number for doing business with the Judiciary have been clearly excluded from the novation process. Guidance has also been added on when to obtain the contractor's signature on bilateral modifications.

Significant changes are detailed in the Redline Comparison below. All other changes are technical corrections. 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 Delegation of Procurement Authority

[. . .]

§ 120.20 Authorized Delegations

§ 120.20.10 The Director

(a) Delegation to the Procurement Executive

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

[. . .]

~~(c) Delegation Exclusions~~

~~Notwithstanding the delegation thresholds established herein, the Director does not delegate~~

This general delegation to chief judges and federal public defenders does not include any of the following actions ~~to chief judges or federal public defenders, and they, which~~ 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 \(Ratification\)](#).

~~(dc)~~ **See also:**

[. . .]

§ 140 Contracting Officers Certification Program

[. . .]

§ 140.30 Level 3 Certification: General Delegated Procurement Activities

[. . .]

§ 140.30.50 Training Requirements

To be eligible for appointment as a Level 3 CO, individuals must complete the Judiciary Basic Procurement Seminar (blended training consisting of a desktop online component as well as a two day classroom seminar), and the Judiciary Appropriations Law Course (desktop ~~training~~), and attendance in the COGP classroom training online training). In addition, individuals appointed as Level 3 COs must complete 16 hours of continuing education training every two years. **See also:** [Appx 1F Contracting Officers' Certification Program \(Level 3\)](#).

§ 520 Expert and Consultant Services Contracts

[. . .]

§ 520.80 Contract Type

Firm fixed priced contracts are preferred. When a firm fixed price contract is not suitable, the CO must first document the reasons. A labor-hour contract may be used, ~~but it is only suitable when the CO includes a ceiling price that the contractor exceeds at its own risk~~ (see: Guide, Vol 14, § 410.40.20), subject to the limitations stated at Guide, Vol 14, § 410.40.30.

REDLINE COMPARISON REFLECTING CHANGES

§ 550 Interagency Agreements and Memoranda of Understanding for Obtaining Products and Services

[. . .]

§ 550.30 Limitations

[. . .]

§ 550.30.30 Approval Requirements

[. . .]

~~(d) At the AO, the PE must approve all IAs and MOUs.~~

[. . .]

§ 550.40 Requirements for IAs and MOUs

[. . .]

§ 550.40.40 Economy Act Determination and Finding

[. . .]

- (d) For IAs and MOUs above the delegated procurement authority, ~~and at the AO~~, the D&F must be approved by the PE.

[. . .]

§ 550.40.60 Transfer of Funds

Other federal agencies may require that payment be made by transferring funds via the Department of Treasury's Intra-Governmental Payment and Collection (IPAC) system. If the providing agency requires that payment be made via the IPAC system, the purchasing CO will provide the agency location code in [Form AO 368 \(Interagency Agreement\)](#) or provide it in the other federal agency's form. These set forth the accounting information for both the providing and purchasing agencies besides other relevant details. Because IPAC transfers can only be accomplished at the AO, the CO will seek assistance, if necessary, from the AO Accounting and Financial Systems Division (AFSD) and ensure that the form is properly completed, executed, and a copy forwarded to AFSD. The chief judge, FPD, or FJC Director (or PLO, if delegated) must sign the form as the Authorizing Official, indicating concurrence. ~~The PE will sign the form at the AO.~~ These discussions should be carried out and all the funding issues resolved before requesting chief judge, FPD, FJC Director, ~~PL~~O or PELO approval of the IA or MOU.

§ 745 Contract Modifications

§ 745.10 Policy

[. . .]

§ 745.10.40 Funds Availability

~~(a) The CO cannot execute a contract modification, including a change order, if doing so will cause an increase in the funding level of the contract without having first obtained a certification of the availability of funds. (b) The certification must be based on the anticipated cost/price or the anticipated maximum cost/price. (c) If the actual cost/price exceeds the certification of the availability of funds, then additional funds must be requested before executing the modification (see also: § 745.25) ensured that sufficient funds are available in the judiciary's financial system of record. See also: § 745.25. Any related re-programming of funds which must be done in the financial system cannot be performed by the CO. See also: Guide, Vol. 11, § 320.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 745.15 Types of Modifications

§ 745.15.10 Bilateral Modification Within the Scope of the Contract

- (a) A bilateral modification (also known as a supplemental agreement) is a modification that is signed by both the contractor and the CO. ~~A bilateral modification and~~ is the preferred type of modification for accomplishing a change. changes. The contractor should always be asked to execute the modification first, with the CO signature being second. Most supplemental agreements involve negotiation of price and other terms, usually relating to tasks that are similar to the award of the basic contract. A bilateral agreement is used when:

Text Moved Here: 1

- (1) the change has an effect on the substantive rights of either party;
- (2) there is sufficient time to negotiate a supplemental agreement; or
- (3) there is no basis in the contract's terms for issuing a unilateral modification.

End Of Moved Text

- (b) Bilateral modifications are used to:

[. . .]

- (8) recognize when a sole proprietor originally doing business under a social security number (SSN) changes to a sole proprietor doing business under an Employer Identification Number (EIN).

~~(b) Most supplemental agreements involve negotiation of price and other terms, usually involving tasks that are similar to award of the basic contract. A bilateral agreement is used when:~~

Text Was Moved From Here: 1

§ 745.25 Availability of Funds

§ 745.25.10 In General

The CO may not execute a modification that causes or will cause an increase in required funds without ~~having first obtained a certification of funds availability~~ first ensuring that funds are available in the judiciary's financial system of record, except for modifications to contracts that:

- (a) are conditioned on availability of funds, or
- (b) contain a limitation of cost or funds clause.

§ 745.25.20 ~~Certification of Funds~~ Reserved

~~In both instances, however, the CO must first obtain either a certification of funds conditioned on availability of funds or a memo from a funding official signifying intent to fund the requirement.~~

§ 745.25.30 ~~Basis of Funds Certification~~ Reserved

~~A certification of funds availability must be based on the negotiated price for the modification. Change order modifications which must be executed before agreement on price may be based on the best available estimate. See also: § 745.10.40 and Guide, Vol. 11, § 320.~~