

CHAPTER 3 - PURCHASING METHODS AND PROCEDURES

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CHAPTER 3 - PURCHASING METHODS AND PROCEDURES

Part 3.1. Procurement Sources

3.1.1. Sources of Supply

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

3.1.2. Workshop for People Who are Blind or Severely Disabled

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

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

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

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

- c. The JWOD Act requires the judiciary to purchase products and services on the procurement list, at prices established by the Committee. COs must obtain products and services from a participating nonprofit agency approved by a central nonprofit agency (NIB or NISH). The National Industries for the Blind (NIB) has been designated to represent nonprofit agencies for the blind. NISH has been designated to represent participating nonprofit agencies employing persons with other severe disabilities. Central nonprofit agencies may authorize a CO to transmit orders for specific products or services, directly to a JWOD participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the nonprofit agency. The purchasing office must reflect this lead time in its orders. COs should check GSA federal supply schedules and other commercial vendors' catalogs for JWOD participating nonprofit agencies. The designation of JWOD for their products and services will allow the COs to order directly from these authorized distributors for those products and services specifically labeled as JWOD.
- d. **Purchase Exceptions** - Only if the procurement is granted an exception by the designated central nonprofit agency, then purchasing offices may acquire products or services on the procurement list from commercial sources. In compliance with JWOD Regulations (41 CFR Chapter 51) the following JWOD purchase exceptions apply:
- (1) A central nonprofit agency (NIB or NISH) will normally grant a purchase exception for products or services on the Procurement List when both of the following conditions are met:
 - (a) the central nonprofit agency or its nonprofit agency(ies) cannot furnish a product or service within the period specified, and
 - (b) the product or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).
 - (2) The central nonprofit agency may also grant a purchase exception when the quantity involved is not sufficient to be furnished economically by the nonprofit agency(ies).

- (3) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (1) and (2) of this section.
- (4) The central nonprofit agency is required to obtain the approval of the Committee before granting a purchase exception when the value of the procurement exceeds their authority.
- (5) When the central nonprofit agency grants a purchase exception under the above conditions, it is required to do so promptly and the exception should specify the quantities and delivery period covered by the exception.
- (6) When a purchase exception is granted under paragraph (1) of this section:
 - (a) the CO must initiate commercial purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency (with the concurrence of the Committee, in cases of procurements exceeding the central nonprofit agency's authority).
 - (b) the CO must furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated offer abstract upon awarding of the commercial contract.
- (7) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the CO.

e. Compliance with Orders In compliance with JWOD regulations (41 CFR 51-6.10 Quality of Merchandise) the following applies.

- (1) Products furnished under government specification by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be manufactured in strict compliance with such specifications. Where no specifications exist, products furnished are required to be of a quality equal to, or higher than, similar items available on the commercial market. Products are required to be inspected using nationally recognized test methods and procedures for sampling and inspection.
- (2) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities are required to be performed in accordance with government specifications and standards. Where no government specifications and standards exist, the services are required to be performed in accordance with commercial practices.

f. Quality and Noncompliance Complaints In compliance with JWOD regulations (41 CFR 51-6.11), the following applies:

- (1) When the quality of a product received is not considered satisfactory by the requesting office, the CO must take the following actions as appropriate:
 - (a) For products received from General Services Administration supply distribution facilities or a specifically authorized supply source, the CO must notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

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

3.1.3. Randolph-Sheppard Act

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

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

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

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

3.1.4. Judiciary-Wide Contracts

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

3.1.5. GSA Federal Supply Schedules

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

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

c. *Types of Schedules*

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

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

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

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

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

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

- (1) the total price of the incidental items on the order or agreement is less than the GSA's competition threshold (\$2,500);
- (2) the judiciary CO has determined the price for the item(s) not on the FSS is fair and reasonable;
- (3) the item(s) are clearly labeled on the order as *incidental item(s)* which are not on the FSS; and
- (4) all judiciary clauses applicable to the *incidental item(s)* are included in the order and labeled applicable to the incidental item(s). This includes the use of *JP3 Clause 3-3* and any other judiciary clauses applicable to the incidental item(s).

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

cite the applicable GSA contract number from which the order is placed. When placing orders or establishing a BPA (see **m.** below) under FSS contracts judiciary COs must not seek competition outside of the schedules or synopsize the requirement. Orders against GSA FSS cannot be competed with open market, judiciary-wide contracts, or other federal agency contracts. Orders placed under GSA schedules must be consistent with the judiciary's policies, procedures, and within the contracting officer's delegation authority (See *Guide*, Part B). The judiciary is required to follow the GSA schedule ordering procedures as stated in this subsection when placing an order or establishing a BPA for products or services. The procedures in this section [3.1.5](#) apply to all schedules.

- h.** Orders placed by a judiciary CO under an FSS contract must, be consistent with the judiciary's procurement program requirements applicable to the procurement of the product or service. When ordering from GSA FSS, the judiciary is required to follow the GSA schedule ordering procedures, the GSA contract's terms and conditions, and GSA's competition threshold (\$2,500). The CO may determine that judiciary specific provisions or clauses are also applicable. The CO may then add those to the order. However, the CO should not include provisions or clauses:
- (1) which are already part of the GSA contract (except as directed in judiciary procurement guidance);
 - (2) which conflict with the GSA contract provisions or clauses; or
 - (3) which create ambiguities when added to GSA contract provisions or clauses.
- i.** **Pricing** Products offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g. installation, maintenance, and repair). GSA has already determined the prices of products and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, judiciary COs are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by services requiring a statement of work (see **k.** below). Although GSA has already negotiated fair and reasonable pricing, judiciary COs should seek additional discounts before placing an order (see **n.** below).
- j.** **Ordering procedures** Judiciary COs must use the ordering procedures of this subsection when placing an order or establishing a BPA for products or services. The procedures in this subsection apply to all schedules.
- (1) *Ordering procedures for products, and services **not** requiring a statement of work* Judiciary COs must use the procedures of this subsection when ordering products and services that are listed in the schedule contracts at a fixed price for the performance of a specific task, where a statement of work is not required (e.g. installation, maintenance, and repair).
 - (2) *Orders at or below GSA's competition threshold (\$2,500)* No competition is required. Judiciary COs may place orders at, or below GSA's competition threshold with any FSS contractor. Although not required to solicit from a specific number of schedule contractors, judiciary COs should attempt to

- distribute orders among contractors, by rotating similar purchases. Even when not required, competition is desirable and will likely result in reduced prices.
- (3) *Minimum Competition* Soliciting three sources or reviewing pricing of three sources is a minimum requirement for an order requiring competition. Soliciting additional sources is likely to result in higher levels of customer satisfaction and lower cost to the judiciary. Conducting actual competition (i.e. requesting quotations), rather than only consulting prices is always preferable. Oftentimes, GSA contractors will quote pricing lower than those on the GSA schedule because of special offers or quantity discounts. When the CO solicits pricing by sending an RFQ to at least three sources, receipt of at least one of the completed RFQs is considered adequate competition, since the pricing was prepared in a competitive environment, provided that the CO can determine the price to be fair and reasonable.
- (4) *GSA FSS Competitive Price/Quotation Requirements, Whether a Statement of Work is Required or Not* In requesting pricing or quotations for orders exceeding \$2,500:
- (a) the pricing/quotation requests must all be to GSA schedule holders, or their authorized resellers, that each vendor is among three or more GSA schedule holders being solicited for the requirement, and must specify that the procurements were conducted pursuant to FSS;
 - (b) open market quotations or quotations from other government contracts may not be mixed with pricing/quotations from GSA FSS for the purpose of meeting the competitive requirement;
 - (c) must be for products and/or services specified in the applicable schedule or within the general scope of the schedule;
 - (d) orders from the GSA FSS may not be split in order to circumvent the requirement to obtain three competitive prices/quotations; and
 - (e) must be for the same product or service description provided to each of the vendors solicited.
- (5) *Orders exceeding GSA's competition threshold (\$2,500) but not exceeding the maximum order threshold* Requests for quotations which use "best value" (price and other factors) determinations must include a full description of the evaluation/selection criteria and the relative importance of each factor. Also the CO must state how the evaluation criteria will be used to make the award decision. This information must be disclosed with the solicitation to each potential offeror (See [2.1.7.d.\(5\)](#)). Before placing an order, a judiciary CO must consider reasonably available information about the product or service offered under MAS contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors. In addition to price, when determining best value*, the judiciary CO may consider, among other factors, the following:
- (a) past performance;

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

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

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

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

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

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

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

l. *Evaluation* The judiciary CO must evaluate all responses received using the evaluation criteria provided to the schedule contractors. The judiciary CO is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order, or establish the BPA, with the schedule contractor. After award, judiciary COs should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision must be provided.

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

- (1) *Establishment* Judiciary COs may establish BPAs under any schedule contract to fill repetitive needs for products or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the judiciary CO establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider:

- (a) the scope and complexity of the requirement(s);
 - (b) the need to periodically compare multiple technical approaches or prices;
 - (c) the administrative costs of BPAs; and
 - (d) the technical qualifications of the schedule contractor(s).
- (2) Establishment of a single BPA, or multiple BPAs, must be made using the same procedures outlined in **j.** and **k.** above. BPAs must address the frequency of ordering, invoicing, discounts, requirements (e.g. estimated quantities, work to be performed), delivery locations, and time.
- (3) When establishing multiple BPAs, the judiciary CO must specify the procedures for placing orders under the BPAs.
- (4) *Ordering from BPAs*
- (a) *Single BPA* If the judiciary CO establishes one BPA, authorized users may place the order directly under the established BPA when the need for the product or service arises.
 - (b) *Multiple BPA* If the judiciary CO establishes multiple BPAs, before placing an order exceeding GSA's competition threshold (\$2,500), the judiciary CO must:
 - 1) forward the requirement, or statement of work and the evaluation criteria, to an appropriate additional number of BPA holders, as established in the BPA ordering procedures; and
 - 2) Evaluate the responses received, make the award determination, (see g. above) and place the order with the BPA holder.
 - (c) *BPAs for hourly rate services* If the BPA is for hourly rate services, the judiciary CO must develop a statement of work for requirements covered by the BPA. All orders under the BPA must specify a price for the performance of the tasks identified in the statement of work.
 - (d) *Duration of BPAs* BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.
 - (e) *Review of BPAs*
 - 1) The judiciary CO that established the BPA must review it at least once a year to determine whether:
 - (i) the schedule contract, upon which the BPA was established, is still in effect;
 - (ii) the BPA still represents the best value* (See **j.**(5) above);
 - (iii) estimated quantities/amounts have been exceeded and additional price reductions can be obtained.
 - 2) The judiciary CO must document the results of its review.
- n. *Price reductions and Other Negotiated Changes*** In addition to seeking price reductions before placing an order exceeding the maximum order threshold, or in conjunction with the annual BPA review, there may be other reasons to request a price reduction or other

favorable terms and conditions, such as early delivery of an item. For example, judiciary COs should seek a price reduction when the product or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of individual orders, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual CO for a specific order.

- o. *Authorized Resellers*** If provided by the schedule, offers may be solicited from and subsequent awards may be made to any FSS contract holders or the schedule holder's designated agents or authorized resellers. The designated agents or authorized resellers must be identified in the FSS contract. It is the CO's responsibility to review the FSS schedule.
- p. *Brand Name or Equal*** A "brand name or equal" description may be used, if the CO is prepared to evaluate and accept the item when it is determined to be "equal" to the specified brand name. The CO must document the determination in the procurement file. If the requirement is in excess of \$2,500 and is defined so as to require a particular "brand name," product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, then this is restricting competition to only those who can provide the specified brand name item. **Note:** When a particular brand name, product, or feature is specified and an "or equal" product is not being considered, then the procurement is conducted under other than full and open competition requirements and needs to be justified as such (see [3.6.1.c](#)).
- q. *Sole source justification and approval***

 - (1) Orders placed under schedules are exempt from the requirements to advertise. However, judiciary COs must procure sole source requirements under this subsection only if the need to do so is justified in writing in accordance with section [3.6](#), and approved at the applicable delegation level. For proposed orders exceeding GSA's competition threshold, the judiciary CO may solicit from one source, if the judiciary CO determines that the circumstances deem only one source is reasonably available (e.g. exclusive licensing agreement, etc.).
 - (2) Uniquely under GSA schedule purchases, for requests requiring a statement of work, sole source justifications are not generally appropriate for services schedule orders. Henceforth, generally it is not possible to structure a services request so as to allow a sole source justification under GSA FSSs. An exception is when the services are proprietary in nature. Then the CO must justify this reason and document the file accordingly. Judiciary COs must use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the FSS publications and the contractor's pricelists.
- r. *Documentation***

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

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

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

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

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

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

w. Remedies for nonconformance

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

x. Termination for Cause

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

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

y. Termination for the judiciary's convenience

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

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

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

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

3.1.6. Other Federal Agency Contracts

- a. One method by which the judiciary may obtain products and services is by using other federal agency contracts (also referred to as multi-agency contracts). Other federal agency contracts are delivery or task order contracts established by one agency for use by other government agencies to obtain products and services.
- b. Various federal agencies have awarded contracts that may be used by other agencies. The authority to procure products and services under other federal agency contracts (other than GSA federal supply schedules¹), is either the Economy Act (31 U.S.C. § 1535) or specific statutory authority. See Section 5.5. When ordering from other federal agency contracts the judiciary is required to follow the contract’s ordering procedures and the other federal agency contract’s terms and conditions. The CO may determine that judiciary specific provisions or clauses are also applicable to the procurement. These may be added, if they do not duplicate or conflict with the other agency’s existing terms and conditions. The delivery/task order must cite the contract number from which the order is placed.
- c. See Section 5.5. for information on the procedures for ordering through an interagency agreement (IA) or memorandum of understanding (MOU).
- d. The following procedures must be followed when obtaining products and services through another federal agency contract:

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

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

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

Part 3.2. Publicizing Open Market Procurement Actions

3.2.1. Policy

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

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

c. Exceptions to posting are as follows:

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

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

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

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

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

Part 3.3. Contractor Qualifications

3.3.1. Responsible Prospective Contractors

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

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

3.3.2. Determining Responsibility and Nonresponsibility

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

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

3.3.3. Debarment, Suspension, and Ineligibility

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

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

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

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

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

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

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

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

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

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

3.3.4. Period of Debarment

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

3.3.5. Procedural Requirements for Debarment

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

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

3.3.6. Causes for Suspension

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

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

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

d. Period of Suspension

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

Part 3.4 Small Purchase Procedures

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

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

- b.** COs, supported by such assistance as is necessary, must make a determination that adequate competition has been obtained in any instance in which it is required. In making that determination, COs must act with reasoned discretion, taking into account the business requirements of the particular procurement, the judiciary's general interest in identifying new suppliers, and in providing opportunities for its supplier base.
- c.** **Applicability** The small purchase procedures are for use in making open market fixed-price purchases up to \$25,000. This dollar limitation is referred to as the judiciary's small purchase threshold (see [Guide Volume 1, Chapter 8, Part B](#)).
- d.** **Limitations** A procurement estimated to total more than the judiciary's small purchase threshold may not be split into two or more purchases in order to use small purchase procedures. Nor may a known requirement for goods or services be split, parceled, divided or purchased over a period of time solely in order to avoid the dollar limitations for small purchase procedures.

3.4.2. Open Market Small Purchase Procedures With or Without Competition

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

3.4.3. Competitive Small Purchase Procedures

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

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

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

3.4.4. Purchases of Services

- a.** The Service Contract Act (the Act) applies to service contracts over \$2,500, including purchase orders, which furnish services through the use of service employees. Some examples of service employees include stenographic reporting services, equipment repair services, clerical services, janitorial services, copy center services, mail related services, and data collection, processing and analysis. The Act applies regardless of the beneficiary of the services (judiciary or general public); the source of funding (judiciary or the public); or the place of performance (judiciary or contractor's premises).
- b.** The Act requires that service contracts over \$2,500 contain mandatory provisions regarding minimum wages and fringe benefits. It requires contractors to pay their service employees at least the wages and fringe benefits prevailing in that locality and in no event must service employees be paid less than the minimum wages specified in the Fair Labor Standards Act, 29 U.S.C. 206(a)(1). In addition to including a provision in the contract notifying contractors that the Act applies, a wage determination issued by the Department of Labor (DOL) must be made part of the contract.
- c.** **Exceptions** There are exceptions to the Service Contract Act. For example, professional services or services for the maintenance and repair of automation equipment and office/business machines are excepted, if the services are performed on the office/business machines by the manufacturer or supplier of the equipment.
- d.** **Wage Determinations** Judiciary COs may obtain wage determinations through the DOL website <http://www.wdol.gov/index.html>. The website contains a manual for its use and a point of contact for assistance. The website asks questions specific to the proposed procurement (i.e. performance location, type of service). If a wage determination is available, the website will provide a printer friendly version. The CO will print out the wage determination, include it in the solicitation, in the contract or order award, and maintain it as file documentation. If the wage determination is not available then an electronic 98 (e-98) may be used, which is also accessible through the website. If an e-98

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

- e. The wage determination is to be made part of the solicitation document. In no case is a service contract to be awarded without a wage determination. If the contract is funded by fiscal year appropriations and the term of the contract is extended, such as by exercising an option or by modifying the contract, a new wage determination must be obtained. If the contract is not subject to annual appropriations, such as the copy center agreements (funded by the public) or contracts funded by the Judiciary Information Technology Fund, a new wage determination must be obtained every two years during the contract.
- f. The Code of Federal Regulations (CFR) and the DOL publication Service Contract Act Directory of Occupations may be obtained from the Superintendent of Documents, Government Printing Office, at <http://www.gpo.gov>.
- g. **Clause [Clause 3-160](#)**, “Service Contract Act of 1965, as Amended” is included in every contract over \$2,500 for services covered by the Act or any such award modified to exceed \$2,500. This includes indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500.

3.4.5. Soliciting Under Small Purchase Procedures

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

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

3.4.6. Basis for Award

a. Policy

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

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

c. Best Value Awards based on best value are made to the responsible offeror who submits the most advantageous quotation taking into account price and other evaluation factors specifically stated in the solicitation. This method must be used when price alone may not provide the best overall basis to make the award. Small purchase procedures must not normally be used when the other evaluation factors are highly complex and will require lengthy or detailed offer submissions by the offerors or quoters. In such situations, standard competitive contracting procedures must be used (see [3.5.](#)) no matter the dollar value of the purchase.

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

3.4.7. Receipt and Evaluation of Quotations

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

3.4.8. Ordering Methods Under Small Purchase Procedures

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

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

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

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

(2) **Purchase Order Terms and Conditions** In order to protect the judiciary's rights when acquiring products and/or services, it is important that basic terms and conditions be made a part of any purchase order issued.

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

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

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

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

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

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

d. Use of BPAs BPAs are used when:

- (1) a wide variety of items in a broad class of products or services may be available from suppliers, but quantities and delivery requirements are not known in advance and may vary considerably;
- (2) there is a desire to reduce preparation of numerous written orders and processing of invoices since billing is done collectively for several calls over an established time period (usually monthly); or
- (3) there is a need to provide commercial sources of supply for ordering by offices that do not have other purchasing authority.

e. Sources BPAs may be established with suppliers when numerous individual purchases will likely be made in a given period. It would be advantageous to establish BPAs with certain suppliers who are dependable, consistently lower in price than other suppliers, and when numerous small purchases are expected to be made from them. BPAs may be established with GSA FSS schedule holders, with other federal agencies, or on the open market using the same competition and ordering procedures established in [3.1.5](#) (GSA), [3.1.6](#) (other federal agency), or [3.4.8](#) (small purchase procedures). Any competitive procurement must be conducted with the same type of source (i.e. all GSA, all other federal agencies, or all open market).

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

- (1) the scope and complexity of the requirement(s);
- (2) the technical qualifications of the contractor(s);
- (3) the administrative costs of BPAs;
- (4) the need to periodically compare multiple technical approaches or prices; and
- (5) the need to have backup sources for the products and/or services, since BPA holders are not required to accept orders.

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

authorized procedures are being followed, pricing is still competitive, and that continued use is justified.

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

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

3.4.10. Termination and Cancellation of Purchase Orders

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

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

Part 3.5. Standard Competitive Contracting Procedures

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

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

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

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

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

(b) contractor's signature; and

(c) CO's signature.

(2) **Contract Terms and Conditions** In order to protect the judiciary's rights when acquiring products and/or services, it is important that basic terms and conditions be made a part of any contract issued.

b. Soliciting Under Standard Competitive Contracting Procedures

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

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

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

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

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

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

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

c. Provisions and Clauses

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

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

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

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

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

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

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

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

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

3.5.2. Pre-Offer Conference

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

3.5.3. Amendment of Solicitations

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

3.5.4. Cancellation of Solicitations

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

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

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

3.5.5. Disclosure and Use of Information

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

3.5.6. Receipt of Offers

- a. **Handling** Offers must be marked with the date and time of receipt and kept secure at all times. It is equally important to keep them secure before and after opening as well as during the recording and evaluation processes.
- b. **Opening and Recording** After the time established for receipt, the CO will open and record the offers.
- c. **Modification and Withdrawal** Offers may be modified or withdrawn by written notice. An offer modification must be received by the date and time set for receipt of offers. Notice of withdrawal of an offer must be received before award.
- d. **Late Offers** Any offer received at the office designated in the solicitation after the exact date and time specified for receipt of offers will not be considered unless it is received before award is made and:
 - (1) it was sent by registered mail or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - (2) it was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by commercial carrier) if it is determined by the judiciary that the late receipt was due primarily to judiciary mishandling after receipt at the judiciary installation);
 - (3) it was sent by U.S. Postal Service express mail next day service - post office to addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of offers. The term “working days” excludes weekends and U.S. federal holidays;
 - (4) it was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers;
 - (5) there is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the judiciary’s control prior to the time set for receipt of offers, and the CO determines that accepting the late offer would not unduly delay the procurement;
 - (6) it is the only offer received; or
 - (7) the CO decides that acceptance is in the best interest of the judiciary, provided offers have not been opened.
- e. As prescribed in [3.5.1.c.\(18\)](#), [Provision 3-90](#), “Late Submissions, Modifications, and Withdrawal of Offers” is included in all solicitations exceeding the judiciary’s small purchase threshold. Each late offer and modification must be retained in the solicitation file with a statement as to whether it was considered, with the reasons.
- f. If facsimile offers are authorized, [Provision 3-115](#), “Facsimile Offers” is included as prescribed in [3.5.1.c.\(22\)](#).

3.5.7. Failure to Acknowledge Amendments

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

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

3.5.9. Evaluation of Offers

- a. **General** Offer evaluation is an assessment of both the offer and the offeror's ability (as demonstrated by the offer), to perform the prospective procurement successfully. The judiciary must evaluate competitive offers and then assess their relative qualities solely on the evaluation factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including pass/fail, color (blue, yellow, green) or adjectival ratings (fair, satisfactory, good, excellent, etc.), numerical weights (percentages, all weighted factors added together must total no more than 100%), and ordinal rankings (of 1st, 2nd, 3rd, etc. in importance). The relative strengths, deficiencies, significant weaknesses, and risks supporting the offer evaluation must be documented in the procurement file.
- b. **Price or Cost Evaluation** Prices or estimated costs must be evaluated in accordance with [4.4.](#) or [4.5.](#) Price or cost analysis is necessary to determine the reasonableness and validity of a proposed price or cost estimate, and to assist in determining an offeror's understanding of the work and ability to perform the contract.
- c. **Evaluation of Other Factors** Each offer must be examined to determine whether it meets the requirements of the solicitation. The specific purchase requirements, the evaluation factors, and the source selection plan determine the extent of the required analysis. The evaluation must be documented to include:
 - (1) the basis for evaluation;
 - (2) an analysis of the acceptable and unacceptable offers, including an assessment of each offeror's ability to accomplish the solicitation requirements;
 - (3) a narrative statement of the major strengths and weaknesses of the various offers;
 - (4) a summary, matrix, or quantitative ranking of each offer in relation to the best rating possible; and
 - (5) a summary of the evaluation team's finding, as well as each evaluator's independent findings.

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

3.5.10. Selection for Award

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

3.5.11. Discussing Offers

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

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

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

3.5.13. Award Without Discussions

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

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

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

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

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

3.5.16. Competitive Range

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

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

3.5.17. Best and Final Offers

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

3.5.18. Selection and Negotiation

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

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

3.5.19. Award

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

3.5.20. Award Debriefing

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

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

Part 3.6. Other Than Full and Open Competition

3.6.1. General

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

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

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

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

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

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

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

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

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

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

3.6.4. Award Procedures

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

3.7. Unsolicited Offers

3.7.1. General

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

3.7.2. Judiciary Points of Contact

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

3.7.3. Content of Unsolicited Offers

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

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

3.7.4. Receipt and Initial Review

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

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

3.7.5. Evaluation

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

3.7.6. Criteria for Acceptance and Negotiation of an Unsolicited Offer

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

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

3.7.7. Prohibitions

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

3.7.8. Limited Use of Data

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

Use and Disclosure of Data

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

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

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

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

Unsolicited Offer - Use of Data Limited

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

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

Part 3.8. Price Negotiations

3.8.1. Pre-Negotiation Procedures

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

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

3.8.2. Negotiation

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

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

3.8.4. Price Analysis

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

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

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

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

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

Part 3.9. Judiciary Protest Procedures

3.9.1. Policy

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

3.9.2. Procedural Requirements

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

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

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

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

Exhibit 3-1
Sample Offering Letter to Randolph Sheppard Agency

[Date]

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

Dear M :

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

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

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

Sincerely,

Procurement Liaison Officer

Enclosure

(Name)
State Agency Rehabilitation Services

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

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

Signature:_____

Printed Name:_____

Title:_____

Phone:_____

FAX:_____

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