

JP3 Clause 3-1, Contractor Use of Mandatory Sources of Products or Services

As prescribed in 3.1.2.(g), the contracting officer will insert this clause in Section I.

Contractor Use of Mandatory Sources of Products or Services (JAN 2003)

- (a) Certain products or services to be provided under this contract for use by the judiciary are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) under Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. § 48)). Additionally, certain of these products are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The contractor shall obtain mandatory products or services to be provided for judiciary use under this contract from the specific sources indicated in the contract schedule.
- (b) The contractor shall immediately notify the contracting officer if a mandatory source is unable to provide the products or services by the time required, or if the quality of products or services provided by the mandatory source is unsatisfactory. The contractor shall not purchase the products or services from other sources until the contracting officer has notified the contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.
- (c) Price and delivery information for the mandatory products is available from the contracting officer for the products obtained through the DLA/GSA/VA distribution facilities. For mandatory products or services that are not available from DLA/GSA/VA sources, price and delivery information is available from the appropriate central nonprofit agency. Payments will be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

National Industries for the Blind (NIB)
1901 North Beauregard Street, Suite 200
Alexandria, VA 22311-1705
(703) 998-0770

NISH
2235 Cedar Lane
Vienna, VA 22182-5200
(703) 560-6800

(end)

JP3 Clause 3-3, “Provisions, Clauses, Terms and Conditions - Small Purchases”

As prescribed in 3.1.5.f.(4) and 3.4.8.a.(3), and when applicable, the contracting officer must include this clause in small purchase requests for quotation (RFQs) and purchase orders.

Provisions, Clauses, Terms and Conditions - Small Purchases (OCT 2006)

- (a) The following Judiciary Procurement Program Procedures (*JP3*) provisions are incorporated by reference into the request for quotations (RFQ):
- (1) *JP3* Provision 3-90, "Late Submissions, Modifications and Withdrawal of Offers" (JAN 2003)
 - (2) *JP3* Provision, 7-60, "Judiciary Furnished Property or Services" (JAN 2003)
- (b) The contractor shall comply with the following Judiciary Procurement Program Procedures (*JP3*) clauses incorporated by reference:
- (1) *JP3* Clause 2-60, "Stop Work Order" (JAN 2003)
 - (2) *JP3* Clause 3-205, "Protest After Award" (JAN 2003)
 - (3) *JP3* Clause 7-20, "Security Requirements" (JAN 2003)
 - (4) *JP3* Clause 7-30, "Public Use of the Name of the Federal Judiciary" (JAN 2003)
 - (5) *JP3* Clause 7-35, "Disclosure or Use of Information" (AUG 2004)
 - (6) *JP3* Clause 7-85, "Examination of Records" (JAN 2003)
 - (7) *JP3* Clause 7-130, "Interest (Prompt Payment)" (JAN 2003)
 - (8) *JP3* Clause 7-135, "Payments" (JAN 2003) (Payment means acceptance by the inclusion of this clause.)
 - (9) *JP3* Clause 7-140, "Discounts for Prompt Payment" (JAN 2003)
 - (10) *JP3* Clause 7-150, "Extras" (JAN 2003)
 - (11) *JP3* Clause 7-185, "Changes" (JAN 2003)
 - (12) *JP3* Clause 7-200, "Judiciary Delay of Work" (JAN 2003) (Applies for products and fixed-price services.)
 - (13) *JP3* Clause 7-210, "Payment for Emergency Closures" (AUG 2004)
 - (14) *JP3* Clause 7-235, "Disputes" (JAN 2003)
- (c) The contractor shall comply with the following *JP3* clauses, incorporated by reference, unless the circumstances do not apply:
- (1) *JP3* Clause B-20, "Computer Generated Forms" (JAN 2003) (Applies when the contractor is required to submit data on standard or optional forms.)
 - (2) *JP3* Clause 6-60, "Rights in Data - General" (AUG 2004) (Applies if data will be produced, furnished, or acquired under the purchase order.)
 - (3) *JP3* Clause 7-145, "Government Purchase Card" (JAN 2003) (Applies when the CO determines that the purchase card can be used to make payments.)
 - (4) *JP3* Clause 2-115, "Terms for Commercial Advance Payment of Purchases" (OCT 2006) (Applies if advance payment will be authorized.)
 - (5) *JP3* Clause 2-115, Alt I (Applies if advance payment is authorized for photocopy equipment maintenance.)
 - (6) The following apply to products only:
 - a) *JP3* Clause, 2-25A, "Delivery Terms and Contractor's Responsibilities" (JAN 2003) (Purchase order will specify whether delivery is expected at destination or origin.)

- b) JP3 Clause, 2-45, “Packaging and Marking” (AUG 2004) (Applies to fixed-price products or for a service involving furnishing of products.)
 - c) JP3 Clause, 3-155, Walsh-Healey Public Contracts Act (JAN 2003) (Applies to product procurements over \$10,000 for manufacturing or furnishing products)
- (7) The following apply to services only:
- a) JP3 Clause 1-1, “Employment by the Government” (JAN 2003)
 - b) JP3 Clause 1-5, “Conflict of Interest” (AUG 2004)
 - c) JP3 Clause 3-160, “Service Contract Act of 1965, as amended” (JAN 2003) (Applies if the purchase order amount is over \$2,500 and will require the use of service employees.)
 - d) JP3 Clause 3-170, “Statement of Equivalent Rates for Federal Hires” (JAN 2003) (Applies if the purchase order amount is more than \$2,500 and will require the use of service employees. In the RFQ, the CO will state the employee class and the monetary wage-fringe benefits.)
 - e) JP3 Clause 7-40, “Judiciary-Contractor Relationship” (JAN 2003) (Applies to services when not involving judiciary information technology funds.)
 - f) JP3 Clause 7-65, “Protection of Judiciary Buildings, Equipment and Vegetation” (JAN 2003) (Applies when services are performed at a judiciary installation.)
 - g) JP3 Clause 7-205, “Payment for Judiciary Holidays” (JAN 2003) (Applies to time-and-materials or labor-hour contracts.)
- (d) Inspection/Acceptance The contractor shall tender for acceptance only those products and/or services that conform to the requirements of this contract. The judiciary reserves the right to inspect or test any products or services that have been tendered for acceptance. The judiciary may require repair or replacement of nonconforming products or re-performance of nonconforming services at no increase in contract price. The judiciary must exercise its post-acceptance rights:
- (1) within a reasonable period of time after the defect was discovered or should have been discovered; and
 - (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (e) Excusable delays The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the contracting officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and

shall promptly give written notice to the contracting officer of the cessation of such occurrence.

- (f) Termination for the judiciary's convenience The judiciary reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the contractor can demonstrate to the satisfaction of the judiciary, using its standard record keeping system, have resulted from the termination. The contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the judiciary any right to audit the contractor's records. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- (g) Termination for cause The judiciary may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the judiciary, upon request, with adequate assurances of future performance. In the event of termination for cause, the judiciary shall not be liable to the contractor for any amount for products or services not accepted, and the contractor shall be liable to the judiciary for any and all rights and remedies provided by law. If it is determined that the judiciary improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (h) Warranty The contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(end)

JP3 Provision 3-5, Taxpayer Identification

As prescribed in 3.5.1.c.(1), the contracting officer will insert this provision in Section K.

Taxpayer Identification (JAN 2003)

- (a) *Definitions*

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a social security number or an employer identification number.
- (b) All offerors shall submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d),

reporting requirements of 26 U.S.C. 6041, 6041A and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

- (c) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. 7701(c)(3). If the resulting contract is subject to payment recording requirements, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.
- (d) *Taxpayer Identification Number (TIN):*

- TIN has been applied for.
- TIN is not required, because: _____

- Offeror is a nonresident alien, foreign corporation or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the federal government.

- (e) *Type of organization:*

- sole proprietorship;
- partnership;
- corporate entity (not tax-exempt);
- corporate entity (tax-exempt);
- government entity (federal, state or local);
- foreign government;
- international organization per-26 CFR 1.6049-4;
- other _____.

- (f) *Common parent*

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
Name and TIN of common parent
Name _____
TIN _____

(end)

JP3 Provision 3-10, Data Universal Numbering System (DUNS) Number

As prescribed in 3.5.1.c.(2), the contracting officer will insert this clause in Section L.

Data Universal Numbering System (DUNS) Number (JAN 2003)

- (a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.
- (b) If the offeror does not have a DUNS number, it shall contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, shall call Dun and Bradstreet at 1-800-333-0505. The offeror shall be prepared to provide the following information:
 - (1) company name;
 - (2) company address;
 - (3) company telephone number;
 - (4) line of business;
 - (5) chief executive officer/key manager;
 - (6) date the company was started;
 - (7) number of people employed by the company; and
 - (8) company affiliation.
- (c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(end)

JP3 Provision 3-15, Place of Performance

As prescribed in 3.5.1.c.(3) the contracting officer will insert this provision in Section K.

Place of Performance (JAN 2003)

If the judiciary intends or the offeror proposes, in the performance of any contract resulting from this solicitation, to use one or more facilities located at addresses different from the offeror's address as indicated in this offer, the offeror shall include in its offer a statement referencing this provision and identifying those facilities by street address, city, country, state, and ZIP code, and the name and address of the operators of those facilities if other than the offeror.

(end)

JP3 Provision 3-20, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

As prescribed in 3.5.1.c.(4), the contracting officer will insert this provision in Section K.

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (JAN 2003)

- (a) (1) The offeror certifies, to the best of its knowledge and belief, that:
- (i) the offeror and/or any of its principals:
 - (A) are ___ are not ___ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;
 - (B) have ___ have not ___, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
 - (C) are ___ are not ___ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and
 - ii. The offeror ___ has ___ has not ___, within a three-year period preceding this offer, had one or more contracts terminated for default by any federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- (3) This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.
- (b) The offeror shall provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the contracting officer may render the offeror nonresponsible.
- (d) Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of

this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the judiciary, the contracting officer may terminate the contract resulting from this solicitation for default.

(end)

JP3 Clause 3-25, Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

As prescribed in 3.5.1.c.(5), the contracting officer will insert this clause in Section I.

Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2003)

- (a) The government suspends or debar contractors to protect the government's interests (including the judiciary). The contractor shall not enter into any subcontract in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the federal government.
- (c) A corporate officer or a designee of the contractor shall notify the contracting officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice shall include the following:
- (1) the name of the subcontractor;
 - (2) the contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;
 - (3) the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs; and
 - (4) the systems and procedures the contractor has established to ensure that it is fully protecting the judiciary's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(end)

JP3 Provision 3-30, Certificate of Independent Price Determination

As prescribed in 3.5.1.c.(6), the contracting officer will insert this provision in Section K. If the solicitation is a Request for Quotations, the terms "quotation" and "quoter" may be substituted for "offer" and "offeror".

Certificate of Independent Price Determination (JAN 2003)

- (a) The offeror certifies that:
- (1) the prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement, with any other offeror or with any competitor relating to:
 - (A) those prices;
 - (B) the intention to submit an offer; or
 - (C) the methods or factors used to calculate the prices offered.
 - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or contract award unless otherwise required by law; and
 - (3) no attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory:
- (1) is the person in the offeror's organization responsible for determining the prices in this offer, and that the signatory has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or
 - (2)
 - (i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ (*insert full name of person(s) in the offeror's organization responsible for determining the prices in this offer, and the title of his or her position in the offeror's organization*);
 - (ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision; have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and
 - (iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.
- (c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror shall furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure

(end)

JP3 Clause 3-35, Covenant Against Contingent Fees

As prescribed in 3.5.1.c.(7), the contracting officer will insert this clause in Section I.

Covenant Against Contingent Fees (JAN 2003)

- (a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the judiciary will have the right to annul or terminate this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) *Definitions*
- "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain judiciary contracts nor holds itself out as being able to obtain any judiciary contract or contracts through improper influence.
- "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain judiciary contracts nor holds out as being able to obtain any judiciary contract or contracts through improper influence.
- "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a judiciary contract.
- "Improper influence," as used in this clause, means any influence that induces or tends to induce a judiciary employee or officer to give consideration or to act regarding a judiciary contract on any basis other than the merits of the matter.

(end)

JP3 Clause 3-40, Restrictions on Subcontractor Sales to the Government

As prescribed in 3.5.1.c.(8), the contracting officer will insert this clause in Section I.

Restrictions on Subcontractor Sales to the Government (JAN 2003)

- (a) Except as provided in (b) of this clause, the contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the judiciary of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the contractor from asserting rights that are otherwise authorized by law or regulation.

- (c) The contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the judiciary's small purchase threshold.

(end)

JP3 Clause 3-45, Anti-Kickback Procedures

As prescribed in 3.5.1.c.(9), the contracting officer will insert this clause in Section I.

Anti-Kickback Procedures (JAN 2003)

(a) *Definitions*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining products, materials, equipment, or services of any kind.

"Prime contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining products, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime contractor, who offers to furnish or furnishes any products, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general products to the prime contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58) (the Act), prohibits any person from:
- (1) providing or attempting to provide or offering to provide any kickback;
 - (2) soliciting, accepting, or attempting to accept any kickback; or

- (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
 - (c) (1) The contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting office, the head of the contracting office if it does not have an inspector general, or the Department of Justice.
 - (3) The contractor shall cooperate fully with any federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The contracting officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The contracting officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime contractor shall notify the contracting officer when the monies are withheld.
 - (5) The contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed the judiciary's small purchase threshold.
- (end)

JP3 Clause 3-50, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

As prescribed in 3.5.1.c.(10), the contracting officer will insert this clause in Section I.

Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 2003)

- (a) If the judiciary receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. § 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the judiciary may:
 - (1) cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) rescind the contract with respect to which:

- (i) the contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either:
 - (A) exchanging the information covered by such subsections for anything of value; or
 - (B) obtaining or giving anyone a competitive advantage in the award of a judiciary contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the judiciary rescinds the contract under paragraph (a) of this clause, the judiciary is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
 - (c) The rights and remedies of the judiciary specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(end)

JP3 Clause 3-55, Price or Fee Adjustment for Illegal or Improper Activity

As prescribed in 3.5.1.c.(11), the contracting officer will insert this clause in Section I.

Price or Fee Adjustment for Illegal or Improper Activity (JAN 2003)

- (a) The judiciary, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. § 423).
- (b) The price or fee reduction referred to in paragraph (a) of this clause will be:
 - (1) for cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) for cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) for cost-plus-award-fee contracts:
 - (i) the base fee established in the contract at the time of contract award;
 - (ii) if no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the contractor for each award fee evaluation period or at each award fee determination point.
 - (4) for fixed-price-incentive contracts, the judiciary may:

- (i) reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) if an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the contracting officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract will be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price will be the total final contract price.
- (5) for firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the contracting officer from records or documents in existence prior to the date of the contract award.
- (c) The judiciary may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the judiciary may terminate this contract for default. The rights and remedies of the judiciary specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(end)

JP3 Provision 3-60, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

As prescribed in 3.5.1.c.(12), the contracting officer will insert this provision in Section K.

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (JAN 2003)

- (a) The definitions and prohibitions contained in the clause 3-65 "Limitation on Payments to Influence Certain Federal Transactions," included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan,

- the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;
- (2) if any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, a disclosure to the contracting officer; and
 - (3) he or she will include the language certifying this in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of the judiciary's small purchase threshold shall certify and disclose accordingly.
 - (4) submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure to be filed or amended by this provision, will be subject to a civil penalty of not less than \$10,000, and not more than the judiciary's small purchase threshold, for each such failure.
- (end)

JP3 Clause 3-65, Limitation on Payments to Influence Certain Federal Transactions

As prescribed in 3.5.1.c.(13), the contracting officer will insert this clause in Section I.

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

(a) *Definitions*

"Covered federal action," as used in this clause, means any of the following federal actions:

- (1) the awarding of any federal contract;
- (2) the making of any federal grant;
- (3) the making of any federal loan;
- (4) the entering into of any cooperative agreement; and
- (5) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered federal action.

"Local government," as used in this clause, means a unit of government in a state and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of judiciary," as used in this clause, includes the following individuals who are employed by the judiciary:

- (1) an individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) a special government employee, as defined in section 202, Title 18, United States Code;
- (3) an individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates judiciary consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates judiciary consideration of such person will be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions*

- (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any cooperative agreement; or the modification of any federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires contractors to furnish a disclosure if any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the judiciary, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Judiciary and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered federal action if the payment is for judiciary and legislative liaison activities not directly related to a covered federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by the judiciary or Congress is permitted at any time.
 - (C) The following judiciary and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered federal action:
 - (1) discussing with the judiciary the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) technical discussions and other activities regarding the application or adaptation of the person's products or services for the judiciary's use.
 - (D) The following judiciary and legislative liaison activities are permitted where they are prior to formal solicitation of any covered federal action:
 - (1) providing any information not specifically requested but necessary for the judiciary to make an informed decision about initiation of a covered federal action;

- (2) technical discussions regarding the preparation of an unsolicited offer prior to its official submission; and
 - (3) capability presentations by persons seeking awards from the judiciary pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
- (ii) *Professional and technical services*
- (A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this clause, does not apply in the case of:
- (1) a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered federal action or an extension, continuation, renewal, amendment, or modification of a covered federal action, if payment is for professional or technical services rendered in the preparation, submission, or negotiation of any offer or application for that federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal action.
 - (2) any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered federal action or an extension, continuation, renewal, amendment, or modification of a covered federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any offer, or application for that federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal action. Persons other than officers or employees of a person requesting or receiving a covered federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying an offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying

their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's offer, but generally advocate one offer over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of an offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(c) *Disclosure*

- (1) The contractor who requests or receives from an agency a federal contract shall file with that agency a disclosure, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered federal action), which would be prohibited under paragraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure previously filed by such person under paragraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes:
 - (i) a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
 - (ii) a change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
 - (iii) a change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered federal action.
- (3) The contractor shall require the submission of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding the judiciary's small purchase threshold under the federal contract.

- (4) All subcontractor disclosures (but not certifications) shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosures to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (d) *Agreement* The contractor agrees not to make any payment prohibited by this clause.
- (e) *Penalties*
- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (b) of this clause will be subject to civil penalties as provided for by 31 U.S.C. § 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) *Cost allowability* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(end)

JP3 Provision 3-70, Determination of Responsibility

As prescribed in 3.5.1.c.(14), the contracting officer will insert this provision in Section M.

Determination of Responsibility (JAN 2003)

A determination of responsibility will be made on the apparent successful offeror prior to contract award. If the prospective contractor is found non-responsible, that offeror will be rejected and will receive no further consideration for award. In the event a contractor is rejected based on a determination of non-responsibility, a determination will be made on the next apparent successful offeror.

(end)

JP3 Provision 3-75, Limited Criminal Background Suitability Check

As prescribed in 3.5.1.c.(15), the contracting officer will insert this clause in Section H.

Limited Criminal Background Suitability Check (JAN 2003)

All vendor employees working on-site at court facilities will be required to complete GSA Form 176, Statement of Personal History, in order that a limited criminal background suitability check may be performed. No vendor employee will be granted

access for work at court facilities if they have been convicted of a felony without the specific approval of the Clerk.

(end)

JP3 Provision 3-80, Submission of Offers

As prescribed in 3.5.1.c.(16), the contracting officer will insert this provision in Section L.

Submission of Offers (JAN 2003)

- (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means):
 - (1) addressed to the office specified in the solicitation; and
 - (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.
- (b) Offerors using commercial carrier services shall ensure that the offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.
- (c) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice.
- (d) Facsimile offers, modifications, or withdrawals, will not be considered unless authorized by the solicitation.
- (e) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(end)

JP3 Provision 3-85, Explanation to Prospective Offerors

As prescribed in 3.5.1.c.(17), the contracting officer will insert this provision in Section L.

Explanation to Prospective Offerors (AUG 2004)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc. shall submit such questions in writing only to the contracting officer soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given by the contracting officer to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment to the solicitation, if that information is deemed by the contracting officer to be necessary in submitting offers or if, in the judgment of the contracting officer, the lack of it would be prejudicial to any other prospective offerors. The offeror is instructed specifically to contact only the contracting officer in connection with any aspect of this procurement prior to contract award. Contact with any other

judiciary official except the contracting officer, or without the contracting officer's express consent, concerning this solicitation may result in disqualification of the offeror from consideration for award.

(end)

JP3 Provision 3-90, Late Submissions, Modifications and Withdrawals of Offers

As prescribed in 3.5.1.c.(18) and 3.5.6.e., the contracting officer will insert this provision in Section L.

Late Submissions, Modifications, and Withdrawals of Offers (JAN 2003)

- (a) Offerors are responsible for submitting offers, and any modifications or withdrawals, so as to reach the judiciary office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated judiciary office on the date that offers are due.
- (b) (1) Any offer, modification, or withdrawal received at the judiciary office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late offer would not unduly delay the procurement; and:
 - (i) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (ii) there is acceptable evidence to establish that it was received at the judiciary installation designated for receipt of offers and was under the judiciary's control prior to the time set for receipt of offers.
- (2) However, a late modification of an otherwise successful offer that makes its terms more favorable to the judiciary, will be considered at any time it is received and may be accepted.
- (c) Acceptable evidence to establish the time of receipt at the judiciary installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of judiciary personnel.
- (d) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the judiciary office designated for receipt of offers by the exact time specified in the solicitation and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.
- (e) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. If the solicitation authorizes facsimile offers, offers may be

withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in Provision 3-115, "Facsimile Offers." An offer may be withdrawn in person by an offeror or its authorized representative, if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(end)

JP3 Provision 3-95, Preparation of Offers

As prescribed in 3.5.1.c.(19), the contracting officer will insert this provision in Section L.

Preparation of Offers (JAN 2003)

- (a) Offerors are expected to examine the drawings, specifications, schedule and all provisions and instructions. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the offer and each continuation sheet on which it makes an entry. Erasures or other changes shall be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the purchasing office.
- (c) For each item in the offer, the offeror shall:
 - (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation; and
 - (2) enter the extended price/cost for the quantity of each item offered in the "amount" column of the schedule.

In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

- (d) Offers for products or services other than those specified will not be considered unless authorized by the solicitation.
- (e) Offerors shall state a definite time for delivery of products or for performance of services, unless otherwise specified in the solicitation.
- (f) Time, if stated as a number of days, will include Saturdays, Sundays, and federal holidays.

(end)

JP3 Provision 3-100, Instructions to Offerors

As prescribed in 3.5.1.c.(20) and 3.5.13.a., the contracting officer will insert this provision in Section L.

Instructions to Offerors (JAN 2003)

- (a) *Definitions* As used in this provision:
- "Discussions" are negotiations that occur after establishment of the competitive range that may, at the contracting officer's discretion, result in the offeror being allowed to revise its offer.
- In writing, "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- "Offer modification" is a change made to an offer before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.
- "Offer revision" is a change to an offer made after the solicitation closing date, at the request of or as allowed by a contracting officer as the result of negotiations.
- "Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period will include the next working day.
- (b) *Amendments to solicitations* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).
- (c) *Submission, modification, revision, and withdrawal of offers*
- (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, offers and modifications to offers shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers shall ensure that the offer is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.
- (2) The first page of the offer shall show:
- (i) the solicitation number;
 - (ii) the name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
 - (iii) a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
 - (iv) names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the judiciary in connection with this solicitation; and
 - (v) name, title, and signature of person authorized to sign the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

- (3) *Submission, modification, revision, and withdrawal of offers*
- (i) Offerors are responsible for submitting offers, and any modifications or revisions, so as to reach the judiciary office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated judiciary office on the date that offer or revision is due.
 - (ii) (A) Any offer, modification, or revision received at the judiciary office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the contracting officer determines it's in the judiciary's best interest, the contracting officer determines that accepting the late offer would not unduly delay the procurement, and:
 - (1) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the judiciary infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (2) there is acceptable evidence to establish that it was received at the judiciary installation designated for receipt of offers and was under the judiciary's control prior to the time set for receipt of offers; or
 - (3) it is the only offer received.
 - (ii) (B) However, a late modification of an otherwise successful offer that makes its terms more favorable to the judiciary, will be considered at any time it is received and may be accepted.
 - (iii) Acceptable evidence to establish the time of receipt at the judiciary installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of judiciary personnel.
 - (iv) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the office designated for receipt of offers by the exact time specified in the solicitation, and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.
 - (v) Offers may be withdrawn by written notice received at any time before award. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the JP3 Provision, "Facsimile Offers". Offers may be withdrawn in person by an offeror or an authorized representative, if

- the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award.
- (4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
 - (5) Offerors shall submit offers in response to this solicitation in English and in U.S. dollars.
 - (6) Offerors may submit modifications to their offers at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
 - (7) Offerors may submit revised offers only if requested or allowed by the contracting officer.
 - (8) Offers may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the contracting officer.
- (d) *Offer expiration date* Offers in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).
- (e) *Restriction on disclosure and use of data* Offerors that include in their offers data that they do not want disclosed to the public for any purpose, or used by the judiciary except for evaluation purposes, shall:
- (1) mark the title page with the following legend:

This offer includes data that shall not be disclosed outside the judiciary and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the judiciary shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the judiciary's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and
 - (2) mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this offer.
- (f) *Contract award*
- (1) The judiciary intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.
 - (2) The judiciary may reject any or all offers if such action is in the judiciary's interest.
 - (3) The judiciary may waive informalities and minor irregularities in offers received.
 - (4) The judiciary intends to evaluate offers and award a contract without discussions with offerors (except clarifications). Therefore, the offeror's initial offer shall

contain the offeror's best terms from a cost or price and technical standpoint. The judiciary reserves the right to conduct discussions if the contracting officer later determines them to be necessary. If the contracting officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers.

- (5) The judiciary reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.
- (6) The judiciary reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the judiciary's best interest to do so.
- (7) Exchanges with offerors after receipt of an offer do not constitute a rejection or counteroffer by the judiciary.
- (8) The judiciary may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub-line items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the judiciary.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time specified in the offer shall result in a binding contract without further action by either party.
- (11) The judiciary may disclose the following information in postaward debriefings to other offerors:
 - (i) the overall evaluated cost or price and technical rating of the successful offeror;
 - (ii) the overall ranking of all offerors, when any ranking was developed by the judiciary during source selection;
 - (iii) a summary of the rationale for award; and
 - (iv) for procurements of commercial items, the make and model of the item to be delivered by the successful offeror.

Alternate I - *Substitute the following paragraph for paragraph (f)(4) of the basic provision if the judiciary intends to make award after discussions with offerors within the competitive range.*

- (f)(4) The judiciary intends to evaluate offers and award a contract after conducting discussions with offerors whose offers have been determined to be within the competitive range. If

the contracting officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers. Therefore, the offeror's initial offer shall contain the offeror's best terms from a price and technical standpoint.

Alternate II *Add a paragraph (c)(9) to the basic clause, if the judiciary would be willing to accept alternate offers.*

- (c)(9) Offerors may submit offers that depart from stated requirements. Such offers shall clearly identify why the acceptance of the offer would be advantageous to the judiciary. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the judiciary, shall be clearly identified and explicitly defined. The judiciary reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised offers based on the revised requirements.

(end)

JP3 Clause 3-105, Audit and Records - Negotiation

As prescribed in 3.5.1.c.(21), the contracting officer will insert this clause in Section I.

Audit and Records - Negotiation (JAN 2003)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the contractor shall maintain and the contracting officer, or an authorized representative of the contracting officer, will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination will include inspection at all reasonable times of the contractor's plants, or parts of them, engaged in performing the contract.
- (c) *Cost or pricing data* If the contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the contracting officer, or an authorized representative of the contracting officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, will have the right to examine and audit all of the contractor's records, including computations and projections, related to:
- (1) the offer for the contract, subcontract, or modification;
 - (2) the discussions conducted on the offer(s), including those related to negotiating;
 - (3) pricing of the contract, subcontract, or modification; or

- (4) performance of the contract, subcontract or modification.
- (d) *Comptroller General*
 - (1) The Comptroller General of the United States, or an authorized representative, will have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) *Reports* If the contractor is required to furnish cost, funding, or performance reports, the contracting officer or an authorized representative of the contracting officer will have the right to examine and audit the supporting records and materials, for the purpose of evaluating:
 - (1) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) the data reported.
- (f) *Availability* The contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter or longer period required by statute or by other clauses of this contract. In addition:
 - (1) if this contract is completely or partially terminated, the contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) the contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the judiciary's small purchase threshold, and:
 - (1) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-re-determinable type or any combination of these;
 - (2) for which cost or pricing data are required; or
 - (3) that require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (h) The clause may be altered only as necessary to identify properly the contracting parties and the contracting officer under the judiciary prime contract.

(end)

JP3 Provision 3-115, Facsimile Offers

As prescribed in 3.5.1.c.(22), the contracting officer will insert this provision in Section L.

Facsimile Offers (JAN 2003)

- (a) *Definition* "Facsimile offer," as used in this provision, means an offer, revision or modification of an offer, or withdrawal of an offer that is transmitted to and received by the judiciary via facsimile machine.
- (b) Offerors may submit facsimile offers as responses to this solicitation. Facsimile offers are subject to the same rules as paper offers.
- (c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].
- (d) If any portion of a facsimile offer received by the contracting officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document:
 - (1) the contracting officer immediately will notify the offeror and permit the offeror to resubmit the offer;
 - (2) the method and time for re-submission will be prescribed by the contracting officer after consultation with the offeror; and
 - (3) the re-submission will be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for re-submission prescribed by the contracting officer.
- (e) The judiciary reserves the right to make award solely on the facsimile offer. However, if requested to do so by the contracting officer, the apparently successful offeror promptly shall submit the complete original signed offer.

(end)

JP3 Clause 3-120, Order of Precedence

As prescribed in 3.5.1.c.(23), the contracting officer will insert this clause in Section I.

Order of Precedence (JAN 2003)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) the schedule (excluding the specifications);
- (2) representations and other instructions;
- (3) the solicitation/contract provisions and clauses;
- (4) other documents, exhibits, and attachments;
- (5) the specifications.

(end)

JP3 Provision 3-125, Acknowledgment of Solicitation Amendments

As prescribed in 3.5.1.c.(24), the contracting officer will insert this provision in Section L.

Acknowledgment of Solicitation Amendments (JAN 2003)

- (a) Offerors shall acknowledge receipt of any amendment to this solicitation by:
 - (1) signing and returning the amendment;
 - (2) identifying the amendment number and date in the space provided for this purpose on the solicitation form; or
 - (3) letter or telegram.
- (b) Acknowledgments of amendments are subject to the Late Submissions, Modifications and Withdrawals of Offers provision of the solicitation. Offers lacking acknowledgment of an amendment affecting price, quantity, quality, or delivery may be rejected.
(end)

JP3 Provision 3-130, Authorized Negotiators

As prescribed in 3.5.1.c.(25) the contracting officer will insert this provision in Section K.

Authorized Negotiators (JAN 2003)

The offeror represents that the following persons are authorized to negotiate on its behalf with the judiciary in connection with this solicitation (*offeror lists names, titles, and telephone numbers of the authorized negotiators*).

Name: _____
 Titles: _____
 Telephone: _____
 Fax: _____
 Email: _____

(end)

JP3 Provision 3-135, Single or Multiple Awards

As prescribed in 3.5.1.c.(26), the contracting officer will insert this provision in Section L.

Single or Multiple Awards (JAN 2003)

The judiciary may elect to award a single contract or to award multiple contracts for the same or similar products or services to two or more sources under this solicitation.

(end)

JP3 Clause 3-140, Notice to the Judiciary of Labor Disputes

As prescribed in Section 3.5.1.c.(27), the contracting officer will insert this clause in Section I.

Notice to the Judiciary of Labor Disputes (JAN 2003)

If the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice, including all relevant information, to the contracting officer.

(end)

JP3 Clause 3-145, Payment for Overtime Premiums

As prescribed in 3.5.1.c.(28), the contracting officer will insert this clause in Section I.

Payment for Overtime Premiums (JAN 2003)

- (a) The use of overtime is authorized under this contract if the overtime premium does not exceed * _____ or the overtime premium is paid for work:
 - (1) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - (2) by indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) to perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) that will result in lower overall costs to the judiciary.
- (b) Any requests for estimated overtime premiums that exceed the amount specified above shall include all estimated overtime for contract completion and shall:
 - (1) identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the contracting officer to evaluate the necessity for the overtime;
 - (2) demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - (3) identify the extent to which approval of overtime would affect the performance or payments in connection with other judiciary contracts, together with identification of each affected contract; and
 - (4) provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

* Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

(end)

JP3 Clause 3-150, Contract Work Hours and Safety Standards Act - Overtime Compensation

As prescribed in 3.5.1.c.(29), the contracting officer will insert this clause in Section I.

Contract Work Hours and Safety Standards Act - Overtime Compensation (JAN 2003)

- (a) *Overtime requirements* No contractor or subcontractor employing laborers or mechanics will require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages* The responsible contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the contractor and subcontractor are liable for liquidated damages payable to the judiciary. The contracting officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) *Withholding for unpaid wages and liquidated damages* The contracting officer will withhold from payments due under the contract sufficient funds required to satisfy any contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy contractor or subcontractor liabilities, the contracting officer will withhold payments from other federal or federally assisted contracts held by the same contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) *Payrolls and basic records*
 - (1) The contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the judiciary until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The contractor and its subcontractors shall allow authorized representatives of the contracting officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The contractor or subcontractor also shall allow authorized representatives of the contracting officer

or Department of Labor to interview employees in the workplace during working hours.

- (e) *Subcontracts* The contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding the judiciary's small purchase threshold and require subcontractors to include these provisions in any lower tier subcontracts. The contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.
- (end)

JP3 Clause 3-155, Walsh-Healey Public Contracts Act

As prescribed in 3.5.1.c.(30), the contracting officer will insert this clause in Section I.

Walsh-Healey Public Contracts Act (JAN 2003)

If this contract is for the manufacture or furnishing of materials, products, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. §§ 35-45), the following terms and conditions apply:

- (1) all stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect;
- (2) all employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2).

(end)

JP3 Clause 3-160, Service Contract Act of 1965, as Amended

As prescribed in 3.4.4.g. and 3.5.1.c.(31), the contracting officer will insert this clause in Section I.

Service Contract Act of 1965, as Amended (JAN 2003)

- (a) *Definitions*
- “Act”, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).
- “Contractor”, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Judiciary Prime Contractor.”
- “Service employee”, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of

Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

- (b) *Applicability* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4).
- (c) *Compensation*
 - (1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any wage determination attached to this contract.
 - (2)
 - (i) If a wage determination is attached to this contract, the contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e. appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
 - (ii) The conforming procedure shall be initiated by the contractor prior to the performance of contract work by the unlisted class of employees. The contractor shall submit a written report of the proposed conforming action, including information regarding the agreement or disagreement of the employees' authorized representative or, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after the unlisted class of employees performs any contract work. The contracting officer will review the proposed action and promptly submit a report of it, including the contractor's information, together with the contracting officer's recommendation and all pertinent information, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.
 - (iii) The final determination of the conformance action by the Wage and Hour Division will be transmitted to the contracting officer, who will promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination, or it shall be posted as a part of the wage determination.
 - (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination

cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of conformable wage rate(s) is the concept that a pay relationship shall be maintained between job classifications based on the skill required and the duties performed.

- (B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken, but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.
- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work will be a violation of the Act and this contract.

- (vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division will make a final determination of conformed classification, wage rate, and/or fringe benefits which will be retroactive to the date the class of employees commenced contract work..
- (3) *Adjustment of compensation* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract, will be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) *Obligation to furnish fringe benefits* The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments only in accordance with Subpart D of 29 CFR Part 4.
- (e) *Minimum Wage* In the absence of a minimum-wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause will relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.
- (f) *Successor contracts* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality, and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of a minimum wage attachment for this contract setting forth such collective bargained agreement wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not the employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement.

No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in section 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures in 29 CFR 4.10 and/or 4.11 that some or all of the wages and/or fringe benefits in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the

locality, and/or that the collective bargaining agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) *Notification to employees* The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) *Safe and sanitary working conditions* The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor that are unsanitary, hazardous or dangerous to the health or safety of service employees. The contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) *Records*
 - (1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
 - (i) for each employee subject to the Act:
 - (A) name, address, and social security number;
 - (B) correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefit, and total daily and weekly compensation;
 - (C) daily and weekly hours worked by each employee; and
 - (D) any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

- (iii) Any list of the predecessor contractor's employees which had been furnished to the contractor as prescribed by paragraph (n) of this clause.
 - (2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
 - (3) Failure to make and maintain or to make available these records for inspection and transcription will be a violation of the regulations and this contract, and in the case of failure to produce these records, the contracting officer, upon direction of the Department of Labor and notification to the contractor, will take action to cause suspension of any further payment or advance of funds until the violation ceases.
 - (4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the work site during normal working hours.
- (j) *Pay Periods* The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.
- (k) *Withholding of payments and termination of contract* The contracting officer will withhold or cause to be withheld from the judiciary prime contractor under this or any other judiciary contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay employees subject to the Act all or part of the wages or fringe benefits due under the Act, the contracting officer may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the judiciary may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.
- (l) *Subcontracts* The contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) *Collective bargaining agreements applicable to service employees* If wages to be paid or fringe benefits to be furnished any service employees employed by the judiciary prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the judiciary prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in

- the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) *Seniority list* Not less than ten days prior to completion of any contract being performed at a judiciary facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (29 CFR 4.173), the incumbent prime contractor shall furnish the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer will turn over such list to the successor contractor at the commencement of the succeeding contract.
- (o) *Rulings and interpretations* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) (1) *Contractor's certification* By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded judiciary contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
- (2) No part of this contract will be subcontracted to any person or firm ineligible for award of a judiciary contract pursuant to section 5 of the Act.
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) *Variations, tolerances, and exemptions involving employment* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of judiciary business:
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, or physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
- (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of

- sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
- (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.
- (r) *Apprentices* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in a written approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.
- (s) *Tips* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR, part 31. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision:
- (1) the employer shall inform tipped employees about this tip credit allowance before the credit is used;
 - (2) the employees shall be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) the employer shall be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through a combination of direct wages and tip credit; and
 - (4) the use of such tip credit shall have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) *Disputes concerning labor standards* The U.S. Department of Labor has set forth in 29 CFR parts 4,6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause

include disputes between the contractor (or any of its subcontractors) and the contracting office, the U.S. Department of Labor, or the employees or their representatives.
(end)

JP3 Clause 3-170, Statement of Equivalent Rates for Federal Hires

As prescribed in 3.5.1.c.(32), the contracting officer will insert this clause in Section I.

Statement of Equivalent Rates for Federal Hires (JAN 2003)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the judiciary subject to the provisions of 5 U.S.C. § 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage-Fringe Benefits
_____	_____
_____	_____
_____	_____
	(end)

JP3 Clause 3-175, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts)

As prescribed in 3.5.1.c.(33) and 4.1.14(3), the contracting officer will insert this clause in Section I.

Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (JAN 2003)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, will apply to this

- contract. If no such determination has been made applicable to this contract, then the federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, will apply to this contract.
- (d) The contract price or contract unit price labor rates will be adjusted to reflect the contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the contractor as a result of:
- (1) the Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
 - (2) an increased or decreased wage determination otherwise applied to the contract by operation of law; or
 - (3) an amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The contractor shall notify the contracting officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the contracting officer. The contractor shall promptly notify the contracting officer of any decrease under this clause, but nothing in the clause will preclude the judiciary from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates will be modified in writing. The contractor will continue performance pending agreement on or determination of any such adjustment and its effective date.
- (g) The contracting officer or an authorized representative will have access to and the right to examine any directly pertinent books, documents, papers and records of the contractor until the expiration of 3 years after final payment under the contract.

(end)

JP3 Clause 3-180, Fair Labor Standards Act and Service Contract Act - Price Adjustment

As prescribed in 3.5.1.c.(34), the contracting officer will insert this clause in Section I.

Fair Labor Standards Act and Service Contract Act - Price Adjustment (JAN 2003)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements.
- (b) The contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with:
 - (1) an increased or decreased wage determination applied to this contract by operation of law; or
 - (2) an amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it will not otherwise include any amount for general and administrative costs, overhead, or profit.
- (e) The contractor shall notify the contracting officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the contracting officer in writing. The contractor shall promptly notify the contracting officer of any decrease under this clause, but nothing in the clause will preclude the judiciary from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates will be modified in writing. The contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (f) The contracting officer or an authorized representative will, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor.

(end)

JP3 Provision 3-185, Evaluation of Compensation for Professional Employees

As prescribed in 3.5.1.c.(35), the contracting officer will insert this provision in Section L.

Evaluation of Compensation for Professional Employees (JAN 2003)

- (a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the judiciary's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their offers, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The judiciary will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.
- (b) The compensation levels proposed shall reflect a clear understanding of work to be performed and shall indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges shall take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, offers envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.
- (c) The judiciary is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.
- (d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of an offer.

(end)

JP3 Clause 3-190, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA)

As prescribed in 3.5.1.c.(36), the contracting officer will insert this clause in Section I.

**SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA)
(JAN 2003)**

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____ and the _____ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the contracting officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of JP3 Clause 3-160, "Service Contract Act of 1965, as amended", the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(end)

JP3 Provision 3-195, Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-Contractor Certification

As prescribed in 3.5.1.c.(37), the contracting officer will insert this provision in Section K.

Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-Contractor Certification (JAN 2003)

- (a) The following certification shall be checked:

CERTIFICATION

The offeror certifies [] does not certify [] that:

- (1) the items of equipment to be serviced under this contract are commercial items which are used regularly for other than judiciary purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;
- (2) the contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain information technology, scientific and medical and/or office and business equipment. An "established catalog price" is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the contractor and is either published or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain,

- which can be substantiated by data from sources independent of the manufacturer or contractor; and
- (3) the contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers.
- (b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the contractor shall notify the contracting officer as soon as possible.
- (c) Failure to execute the certification in paragraph (a) of this clause or to contact the contracting officer as required in paragraph (b) of this clause may render the offer non-responsive.

(end)

JP3 Clause 3-200, Service Contract Act - Place of Performance Unknown

As prescribed in 3.5.1.c.(38), the contracting officer will insert this clause in Section I.

Service Contract Act - Place of Performance Unknown (JAN 2003)

- (a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: _____ [*insert places or areas*]. The contracting officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ [*insert time and date*].
- (b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit offers. However, a wage determination will be requested and incorporated in the resultant contract retroactive to the date of contract award, and there will be no adjustment in the contract price.

(end)

JP3 Clause 3-205, Protest after Award

As prescribed in 3.5.1.c.(39), the contracting officer will insert this clause in Section I.

Protest after Award (JAN 2003)

- (a) Upon receipt of a notice of protest or a determination that a protest is likely, the contracting officer may, by written order to the contractor, direct the contractor to stop performance of the work called for by this contract. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to

minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the contracting officer will either:

- (1) cancel the stop-work order; or
 - (2) terminate the work covered by the order as provided in the Default, or the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The contracting officer will make an equitable adjustment in the delivery schedule or contract price, or both, and the contract will be modified, in writing, accordingly, if:
- (1) the stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) the contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon an offer at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the judiciary, the contracting officer will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer will allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The judiciary's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the contractor's intentional or negligent misstatement, misrepresentation, or mis-certification, a protest related to this contract is sustained, and the judiciary pays costs, the judiciary may require the contractor to reimburse the judiciary the amount of such costs. In addition to any other remedy available, the judiciary may collect this debt by offsetting the amount against any payment due the contractor under any contract between the contractor and the judiciary.

(end)

JP3 Provision 3-210, Protests

| *As prescribed in 3.5.1.c.(40), the contracting officer will insert this provision in Section L.*

Protests (AUG 2004)

- | (a) The protestor has a choice of protest forums. It is the policy of the judiciary to encourage parties first to seek resolution of disputes with the contracting officer. If the dispute cannot be resolved with the contracting officer, then it is the policy of the judiciary to encourage parties to seek a judiciary resolution of disputes with the Administrative

Office of the United States Courts. However, if a party files a formal protest with an external forum on a solicitation on which it has filed a protest with the judiciary, the judiciary protest will be dismissed.

- (b) Judiciary protests will be considered only if submitted in accordance with the following time limits and procedures:
- (1) any protest shall be filed in writing with the contracting officer designated in the solicitation for resolution of the protest. It shall identify the solicitation or contract protested and set forth a complete statement of the alleged defects or grounds that make the solicitation terms or the award or proposed award defective. Mere statement of intent to file a protest is not a protest.
 - (2) a protest shall be filed not later than ten (10) calendar days after the basis of the protest is known, or should have been known. A protest based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of offers, shall be filed prior to the closing date for receipt of offers. The judiciary, in its discretion, may consider the merits of any protest which is not timely filed. The office hours of the Administrative Office are 8:30 a.m. to 5:00 p.m., eastern time. Time for filing a document expires at 5:00 p.m., eastern time, on the last day on which such filing may be made.
 - (3) the protest shall include the following information:
 - (i) name, address, and fax and telephone numbers of the protester or its representative;
 - (ii) solicitation or contract number;
 - (iii) detailed statement of the legal and factual grounds for the protest, to include a description of resulting alleged prejudice to the protester;
 - (iv) copies of relevant documents;
 - (v) request for a ruling by the judiciary;
 - (vi) statement as to the form of relief requested;
 - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest; and
 - (viii) all information establishing the timeliness of the protest.
- (c) Protests that are filed directly with the judiciary, and copies of any protests that are filed with an external forum, will be served on the contracting officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____.
[contracting officer designate the official or location where a protest may be served on the contracting officer.]
- (d) The copy of any protest shall be received in the office designated above within one day of filing a protest with an external forum.

(end)