



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

**LAWRENCE K. BAERMAN**  
Clerk

**JOHN M. DOMURAD**  
Chief Deputy

**James M. Hanley Federal Building**  
**P.O. Box 7367, 100 S. Clinton St.**  
**Syracuse, New York 13261-7367**  
**(315) 234-8506**  
**Fax (315) 234-8654**

**TITLE:** Request for Quotation - "Desk/cubicle units for 11<sup>th</sup> floor Court Reporter Office, U.S. District Court for the Northern District of New York"

**REQUEST NUMBER:** USDC-SYR-CROfficeFurn-06-20-13

**ISSUED BY:** Sunday Heuser  
Contracting Officer  
U.S. District Court  
100 South Clinton St.  
PO Box 7367  
Syracuse, New York 13261-7367

**DATE ISSUED:** June 20, 2013

**SITE VISIT:** Tuesday, July 2nd, 2013 – 10:30am – 11<sup>th</sup> Floor  
Hanley Federal Building (see instructions below regarding the site visit)

**PROPOSAL DUE DATE AND TIME:** On or before July 26<sup>th</sup>, 2013, 5 p.m. EST.  
Proposals received after this date and time will be considered late.

**OFFER EXPIRATION DATE:** Offers will be valid for 60 days unless a different period is specified by the Offeror.

**Special Notes:** This is a request for GSA Schedule Pricing.

Dear Sir or Madam:

The United States District Court for the Northern District of New York seeks to review the proposals of vendors to provide the purchase and installation of (4) desk/cubicle units to be located

on the 11<sup>th</sup> floor Court Reporter Office at the James Hanley Federal Building in Syracuse, N.Y.

If hand-delivered or delivery service:  
Sunday Heuser, Contracting Officer  
U.S. District Court  
100 South Clinton St.  
7<sup>th</sup> Floor  
Syracuse, New York 13261

If using U.S. Postal Service:  
Sunday Heuser, Contracting Officer  
U.S. District Court  
100 S. Clinton St.  
PO Box 7367  
Syracuse, New York 13261-7367

**Site Visits:**

Due to the space being under construction and the design configuration of this project, a site visit with walk through is mandatory for bidding on this project. Contractor Site Visits will be on Tuesday, July 2<sup>nd</sup> at 10:30am.

**If your company is interested in bidding on this proposal, your representative(s) should arrive at the Hanley Federal Building prior to 10:30am, sign in at Room #105 and acquire a contractor's badge before proceeding to the 11<sup>th</sup> floor for the walkthrough.**

**You must contact the Contracting Officers, Sunday Heuser at 315-234-8506 or Michelle Capozzi at 315-234-8548, to confirm that you will be attending the site visit and walk through so you can be cleared with security. The Contracting Officers will need the name(s) of all individuals from your company that will be attending the walkthrough no later than 12pm (noon) Monday, July 1st.**

**Walk in site visits will not be accepted!!**

**Rejection of Responses**

The United States District Court reserves the right to reject any or all responses to the RFP.

**Cost of Preparation of Quotation.**

The RFP does not commit the Court to pay costs for the preparation and submission of a proposal. It is also brought to your attention that the Contracting Officer is the only individual who can legally commit the Court to the expenditure of public funds in connection with any acquisition action.

**Cancellation**

The United States District Court reserves the right to cancel any further proceedings pursuant to this RFP for any reason. In no event shall the Court have any liability for such cancellation.

## **Evaluation and Selection of Vendor**

Proposals received from the Contractors will be evaluated and selection of the Contractor will be determined based on product compatibility & reliability, service, and the lowest technically acceptable price.

The United States District Court reserves the right to:

- (a) request clarification or additional information from any Contractor at any time,
- (b) modify, remove, or add requirements to the RFP and to suspend or reopen the RFP process,
- (c) reject any or all responses and terminate the RFP

*Final selection of the Contractor is solely within the discretion of the Court and will be contingent on the availability of funds.*

Thank you for your time and consideration. We look forward to your response.

Sincerely,

Sunday Heuser  
Contracting Officer/Procurement Administrator

attachments

(1) Court Reporter Cubicle/Desk unit RFQ - Syracuse Hanley 11<sup>th</sup> Floor

### **This solicitation consists of the following sections:**

**Part 1 - Letter Solicitation, Section B Statement of Work/Specifications - pages 1-6**

**Part 2 - Products - pages 7**

**Part 3 - Execution - pages 8**

**Part 4 - Provisions and Clauses - pages 9-55**

### **ATTACHMENTS:**

**Attachment A - Court Reporter Drawing**

## **SECTION B - STATEMENT OF WORK/SPECIFICATIONS**

### **B.1 GENERAL REQUIREMENTS AND SPECIFICATIONS**

#### **1. SUMMARY**

- a. The purpose of the request for proposal is to seek a contractor to procure, install, configure and test a complete operational video evidence presentation system as an addition to the current audio system located in District Judge's Glen T. Suddaby's Courtroom located on the 11<sup>th</sup> floor of the James Hanley Federal Building at 100 South Clinton Street in Syracuse, NY.
- b. The installation shall include everything necessary or incidental to complete the installation including but not limited to, receptacle plates, wire, electrical boxes, etc. The contractor shall furnish all necessary information to ensure that a proper system is installed that meets the design requirements and the operational requirements of the Court.
- c. The Contractor shall restore finish hardware to the original condition including painting, wall, millwork and ceiling modifications and attachments.
- d. The Contractor shall provide training on the operation of the VEPS system.

#### **2. SCOPE OF WORK**

The purpose of the request for quotation is to seek a vendor to design, procure and install (4) four desk/cubicle furniture configurations in the Court Reporter Office located on the 11<sup>th</sup> floor of the James Hanley Federal Building at 100 South Clinton Street in Syracuse, NY.

The contractor shall create a design for (4) desk/cubicle configuration for the Court Reporter Office with the following requirements:

- Adequate work surface - each unit should be either a "L" or "U" Shaped configuration as determined by the size of the room, number of desk/cubicles and to accommodate the most work surface possible.
- Privacy and noise reduction will be needed on each unit; Separation walls between each unit should have fabric panels at a height of approximately 56" with glass add-on partitions from the top of the 56" panel to a maximum of 84" overall height.
- Each unit should have (1) box/box/file and (1) file/file configuration pedestal on each end. (2) Additional file/file pedestals are also required for a total of (4) pedestals. No overhead storage for any unit.

- Work surfaces should include multiple grommets as well as counter height electrical outlet connections. Each unit should connect for electricity as a whip will be provided by the Court for installation to the units.
- Each unit should also have data connections available at counter height to allow the user to easily plug in their equipment. Data cabling can be run by the Court IT staff during furniture installation.
- Each unit will need (1) articulating keyboard mechanism and tray and (1) ergonomic task chair.
- Each unit should have open panels with leg supports for the work surface against the windows to allow access by building maintenance to the window heating and air conditioning units.
- Included in this room, should be (4) 2-drawer lateral, laminate file cabinets that will be placed against the opposing wall for storing Court Reporter Files as well as house any network connected/shared printers.
- All surfaces, fabrics, laminates and pulls colors will be chosen after design selection is made.
- Quotes should be provided using Grade A fabrics and laminates and should be quoted based on GSA Schedule pricing and include any delivery/installation fees.
- Please note: This space is new construction. Room finishes should be installed/completed mid to late Fall. Delivery and installation of the new units will be performed once the finishes are completed.

### **3. SUBMITTALS**

Submittals for this Request for Quotation (RFQ) should consist of a price quote and furniture drawings for the initial submission. If chosen, final color samples will also be requested for approval by the Court.

### **4. DELIVERY, STORAGE, AND HANDLING**

- a. Control handling and installation of hardware and furniture items that are not immediately replaceable, so that completion of the work will not be delayed by hardware or furniture losses, both before and after installation.
- b. The court will not provide additional space to the contractor for the purpose of pre-assembly. Any required pre-assembly must be conducted at the Contractor's facility or directly within the specified office location.

## **5. SCHEDULING**

It shall be the responsibility of the Contractor to coordinate the installation of the cubicle/desk units to be compatible with the courtroom schedule and the overall construction completion schedule.

## **6. QUALITY ASSURANCES**

### **a. Quality of Materials and Equipment:**

All materials and furniture supplied by the Contractor shall be new and shall meet or exceed the latest published specification of the manufacturer in all respects. The Contractor shall supply the latest model, available at the time of bidding, of each piece of equipment. All furniture is intended to be professional grade and rated for continuous duty. Basic guidelines have been prepared with minimum performance requirements.

These must be satisfied, unless a variance (separate document) is submitted and approved by the Contracting Officer.

- b.** All furniture must be self-supporting and provide all necessary support hardware.
- c.** Coordination of Work: Coordinate layout and installation of furniture with other construction supported by, or penetrating through, ceilings, including light fixtures, HVAC equipment, fire-suppression system, and partitions.
- d.** Warranty Statement: To maintain certain manufacturers' warranties, said furniture must be installed, aligned and serviced by those installers authorized by said manufacturer to perform those duties. If the Contractor is not authorized by said manufacturer, it is his sole responsibility to make the appropriate arrangements and bear all cost and consequences thereof. See Warranty of Products in Section 2, Paragraph 13.

## **7. ATTACHMENTS**

- a.** Attachment A - Court Reporter Office Drawing

## **PART 2- PRODUCTS**

### **8. GENERAL**

- a. All fabrics and furniture pieces shall be new.
- b. Performance criteria or physical characteristics specified herein represent minimum acceptable values unless noted otherwise.

### **9. WARRANTY OF PRODUCTS**

- a. Vendor shall guarantee (warranty) all cubicle/desk units in its entirety according to the manufacturers warranty for defects in material and workmanship for a period of at least one (1)-year from date of installation and to meet all performance requirements outlined herein. Warranties may not be pro-rated.
- b. During the warranty period, the vendor shall respond with a remedy to correct any defects within (30) days after receipt of such a call. Any extension beyond 30 days shall be made in writing to the Contracting Officer for approval.

## **PART 3- EXECUTION**

### **10. GENERAL**

- a. Installation shall include the delivery and installation of each cubicle/desk unit and additional furniture and accessories as requested in this RFQ.
- b. The installation of all work must be in accordance with commonly accepted industrial standards.
- c. Provide necessary screws, anchors, brackets and any support hardware necessary to facilitate the installation of the new cubicle/desk units.
- d. All installation practices shall be in accordance with, but not limited to, these specifications.

### **11. PHYSICAL INSTALLATION**

- a. Cubicle/desk units shall be installed in coordination with the Court's IT Department so that the proper data wiring can be installed as well.
- b. Fastenings and supports shall be adequate to support their loads to ensure safety.
- d. Any damage to surrounding walls and moldings should be corrected immediately upon installation.

## PROVISIONS AND CLAUSES

### **Solicitation Provisions Incorporated by Reference (SEP 2010)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this address:

<http://www.uscourts.gov/procurement.aspx>.

### **Clauses Incorporated by Reference (SEP 2010)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://www.uscourts.gov/procurement.aspx>.

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

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

### **Disclosure of Contractor Information to the Public (AUG 2004)**

- (a) The judiciary reserves the right to disclose information provided by the contractor, in response to a request by a member of the general public. Upon receipt of a written

request, the judiciary will disclose information which would constitute public records in an agency covered by the Freedom of Information Act. In the event the requested information consists of or includes commercial or financial information, including unit prices, the contractor shall be notified of the request and provided with an opportunity to comment.

- (b) The contractor will thereafter be notified as to whether the information requested will be released. The contractor understands and agrees that unit and/or aggregate prices contained in the contract may be subject to disclosure without consent.

### **Inspection of Products (APR 2013)**

- (a) The contractor shall use and maintain a written inspection or quality control system acceptable to the judiciary for the products under this contract. The contractor shall tender to the judiciary for acceptance only products which have been inspected in accordance with the acceptable inspection system and have been found by the contractor to be in conformity with contract requirements. As part of the system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the judiciary during contract performance and for at least three years after acceptance.

The judiciary has the right to evaluate the acceptability and effectiveness of the contractor's inspection system before award and during contract performance. This evaluation may be used to determine the extent of judiciary inspection and testing, but this does not waive its right to inspect and test all items. The right of review, whether exercised or not, does not relieve the contractor of the obligations under the contract.

- (b) The judiciary has the right to inspect and test all products provided under this contract, to the extent practicable, at all times and places, including the period of manufacture, and in any event before acceptance. The judiciary will perform inspections and tests in a manner that will not unduly delay the work. The judiciary assumes no contractual obligation to perform any inspection and test for the benefit of the contractor unless specifically set forth elsewhere in this contract.
- (c) If requested by the judiciary, the contractor shall provide all reasonable facilities and assistance to the judiciary inspectors. If the judiciary performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

Except as otherwise provided in the contract, the judiciary shall bear the expense of judiciary inspections or tests made at other than the contractor's or subcontractor's premises; provided, that in case of rejection, the judiciary shall not be liable for any reduction in the value of inspection or test samples.

- (d) The judiciary may require the contractor to correct or replace any products that fail to comply with the requirements of this contract. Products are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The judiciary may reject nonconforming supplies with or without disposition instructions. Upon determining that the products are nonconforming, the judiciary may, at its discretion:
  - (1) require replacement or correction of the defective products;
  - (2) acquire replacement products from another source, and charge the contractor for any costs incurred by the judiciary; or
  - (3) accept the nonconforming products at a reduced price.
- (e) The contractor shall remove supplies rejected or required to be corrected. However, the contracting officer may require or permit correction in place, promptly after notice, by and at the expense of the contractor. Corrected or replaced products may not be tendered again unless the former tender and the requirement for correction or replacement are disclosed.
- (f) If the contractor fails to proceed with reasonable promptness to remove, replace or correct rejected products, the judiciary may:
  - (1) by contract, or otherwise, remove, replace, or correct the products and charge the cost to the contractor; or
  - (2) terminate this contract for default.
- (g) If the contractor does not correct or replace the products within the contract delivery schedule, the contracting officer may require an equitable price reduction as consideration for late delivery.
- (h) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (i) The contracting officer may require a price reduction for consideration for any judiciary costs incurred for:
  - (1) the total time, including round-trip travel time, lost by judiciary representatives when the contractor is not ready for inspection at the time inspection and testing is requested by the judiciary; and
  - (2) the total time, including round-trip travel time, required by judiciary representatives for reinspection and retesting necessitated by rejection.

### **Responsibility for Products (JAN 2010)**

- (a) Title to products furnished under this contract shall pass to the judiciary upon formal acceptance, regardless of when or where the judiciary takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to products shall remain with the contractor until, and shall pass to the judiciary upon:
  - (1) delivery of the products to a carrier, if transportation is F.o.b. origin; or
  - (2) acceptance by the judiciary or delivery of the products to the judiciary at the destination specified in the contract whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) of this clause shall not apply to products that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming products remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.
- (d) Under paragraph (b) of this clause, the contractor shall not be liable for loss of or damage to products caused by the negligence of officers, agents, or employees of the judiciary acting within the scope of their employment.

### **Warranty Information (JAN 2003)**

Offerors are encouraged to submit information on any standard commercial warranties provided for offered products. The judiciary will consider these warranties in determining the most advantageous offer, to the extent provided in the evaluation factors.

### **Incorporation of Warranty (JAN 2003)**

Notwithstanding the contractor's standard commercial warranty, if offered and accepted by the judiciary, any dispute thereunder will be resolved under the Disputes clause of this contract, notwithstanding any disputes procedure that may be specified in the warranty.

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

- (a) The contractor warrants that all products furnished under this contract, including packaging and markings, will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.
- (b) The contracting officer will give written notice to the contractor of any breach of warranty and either:

- (1) require the prompt correction or replacement of any defective or nonconforming products; or
  - (2) retain them, reducing the contract price by an amount equitable under the circumstances.
- (c) When return for correction or replacement is required, the contractor is responsible for all costs of transportation and for risk of loss in transit. If the contractor fails or refuses to correct or replace the defective or nonconforming products, the contracting officer may correct or replace them with similar products and charge the contractor for any cost to the judiciary. In addition, the contracting officer may dispose of the nonconforming products, with reimbursement from the contractor or from the proceeds for excess costs. Any products corrected or furnished in replacement are subject to this clause.
- (d) The rights and remedies of the judiciary provided in this clause are in addition to, and do not limit, any rights afforded to the judiciary by any other clause of the contract.

#### **Delivery Terms and Contractor's Responsibilities (JAN 2003)**

- (a) The judiciary reserves the right to specify the mode of transportation and routing to be employed.
- (b) Destination: If the contract specifies "F.o.b. destination," the following apply:
- (1) "F.o.b. destination" means delivery to a destination specified in the purchase document by the consignor or seller (unless the contract provides otherwise). This includes within the doors of the specified building, including delivery to specific rooms within the building when specified. The cost of shipping and risk of loss are borne by the seller or consignor. Title to the products passes to the judiciary when deliverables arrive at the contract's stated destination.
  - (2) The contractor shall:
    - (i) pack and mark shipments to comply with contract specifications or, in their absence, prepare shipments in accordance with carrier requirements;
    - (ii) prepare and distribute commercial bills of lading;
    - (iii) deliver the shipment in good order and condition to the point of delivery specified in the contract;
    - (iv) be responsible for loss or damage occurring before receipt at the specified point of delivery;

- (v) furnish a delivery schedule and designate the mode of delivery;
  - (vi) pay and bear all delivery costs to the specified point of delivery.
- (c) Origin: If the contract specifies "F.o.b. origin," the following apply:
- (1) "F.o.b. origin" means delivery, free of expense to the judiciary to the carrier or shipment facility as follows:
    - (i) delivery on board the indicated type of conveyance of the carrier (or of the judiciary, if specified), to the specified point from which the shipment will be made and from which line haul transportation service (as distinguished from switching, local drayage, or other terminal service) begins;
    - (ii) to a U.S. Postal Service facility; or
    - (iii) delivered by the contractor, to any judiciary designated point located within the same commercial zone (as prescribed by the Interstate Commerce Commission) as the F.o.b. point named in the contract.
  - (2) The contractor shall:
    - (i) pack and mark shipments to comply with contract specifications or, in their absence, prepare the shipment in accordance with carrier requirements and good commercial practices and secure the lowest applicable transportation charge.
    - (ii) order specified carrier furniture when requested by the judiciary. Otherwise, order appropriate carrier furniture not in excess of capacity to accommodate the shipment.
    - (iii) deliver the shipment in good order and condition to the carrier, when loaded by the contractor, load, stow, trim, block, and/or brace shipments as required by the carrier's rules and regulations.
    - (iv) be responsible for loss or damage occurring before delivery to the carrier;  
  
and for loss or damage due to improper packing/marketing and, when loaded by the contractor, from improper loading, stowing, trimming, blocking, and/or bracing of the shipment;
    - (v) prepare a commercial bill of lading or other transportation receipt, to show:

- (A) a description of the shipment in terms of the governing freight classification or tariff (or government rate tender) under which the lowest freight rates are applicable;
  - (B) the seals affixed to the conveyance, including the serial number on them, or other identification;
  - (C) the length and capacity of cars or trucks ordered and furnished;
  - (D) other pertinent information required to effect prompt delivery to the consignee, including name delivery address, postal address and ZIP code of consignee, routing, etc.;
  - (E) special instructions or annotations requested by the judiciary for commercial bills of lading (for example, "This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the judiciary"); and
  - (F) the signature of carrier's agent and the date the shipment is received by the carrier.
- (vi) distribute the copies of the bill of lading, or other transportation receipt, as directed by the judiciary.
  - (vii) supply with each invoice a memorandum copy of the bill of lading, clearly indicating the signature of the carrier's agent, date of pickup, and the weight accepted by the carrier. If the weight is determined by the carrier after pickup, it shall be annotated on the memorandum copy of the bill of lading along with the following:  
  
"I certify that the weight information is that obtained from the carrier.  
Signed:"
- (3) If the judiciary has not specified otherwise, the contractor shall ship on commercial bills of lading.
  - (4) If the judiciary specifies that shipment is to be made on endorsed commercial bills of lading for transportation charges up to \$100, the contractor shall be required to prepay all transportation charges, not to exceed \$100, per shipment.
  - (5) The contractor shall annotate the commercial bill of lading as follows: "Property of the United States Judiciary"
  - (6) The actual transportation costs, not to exceed \$100 per shipment, will be added to the contractor's invoice as a separate item. The costs shall be based on the lowest published rate on file with the Interstate Commerce Commission or any state regulatory body. They shall be supported by freight or express receipts marked "prepaid."

### **Packaging and Marking (AUG 2004)**

- (a) Unless otherwise specified, preservation, packaging, and marking for all items delivered hereunder shall be in accordance with commercial practice and adequate to insure acceptance by common carrier and safe arrival at destination. The contractor shall place the contract number and delivery order number, or purchase order, as applicable, on or adjacent to the exterior shipping label or include them on the internal packing slip. For any magnetic media provided, the contractor shall provide extra markings for protection against exposure to magnetic fields or temperature extremes.
- (b) All documentation, reports, and other deliverables shall be clearly marked with the project title, contract number, and delivery order number (when applicable). Unless otherwise specified, all items shall be packaged and packed in shall be considered for protection against exposure to magnetic fields or temperature).

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

- (a) The contracting officer may, at any time, by written order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer will either:
  - (1) cancel the stop-work order; or
  - (2) terminate the work covered by the order as provided in the default, or the Termination for Convenience, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the contractor shall resume work. The contracting officer will make an equitable adjustment in the delivery schedule or contract price, or both, and the contract will be modified, in writing, accordingly, if:
  - (1) the stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) the contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon the claim submitted at any time before final payment under this contract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the judiciary, the contracting officer will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer will allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

### **Material Requirements (JAN 2003)**

- (a) As used in this clause:
  - (1) "new" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the products meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
  - (2) "reconditioned" means restored to the original normal operating condition by readjustments and material replacement.
  - (3) "recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
  - (4) "re-manufactured" means factory rebuilt to original specifications.
  - (5) "virgin material" means:
    - (i) previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
    - (ii) any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or products composed of or manufactured from virgin material, the contractor shall provide products that are new, reconditioned, or re-manufactured, as defined in this clause.
- (c) An offer to provide unused former government surplus property shall include a complete description of the material, the quantity, the name of the government agency from which acquired, and the date of procurement.

- (d) An offer to provide used, reconditioned, or re-manufactured products shall include a detailed description of such products and shall be submitted to the contracting officer for written approval.
- (e) Used, reconditioned, or re-manufactured products, or unused former government surplus property, may be used in performance if the contractor has proposed the use of such products, and the contracting officer has authorized their use.

**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.

**Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (APR 2011)**

- (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, violating federal criminal tax laws, 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;
    - (D) have \_\_\_, have not \_\_\_, within a three-year period preceding this offer, been notified of any delinquent federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

- (1) Federal taxes are considered delinquent if both of the following criteria apply:
  - (i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  - (ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  
- (2) Examples.
  - (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
  - (ii) The IRS has filed a notice of federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

- (iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment. taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. § 362 (the Bankruptcy Code).
    - 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) "Principal," for the purposes of this certification, means an officer; director; owner; partner or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.
- (b) The offeror shall provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the contracting officer may render the offeror nonresponsible.
- (d) Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the judiciary, the contracting officer may terminate the contract resulting from this solicitation for default.

**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.

**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.

### **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) Definition  
  
"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.

### **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.

### **Anti-Kickback Procedures (JUN 2012)**

- (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. §§ 8701-8707) (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.

### **Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JUN 2012)**

- (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. §§ 2101-2107) (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.

### **Price or Fee Adjustment for Illegal or Improper Activity (JUN 2012)**

- (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. §§ 2101-2107).
- (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.

### **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.

### **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.

### **Preparation of Offers (APR 2013)**

- (a) Offerors are expected to examine the drawings, specifications, clauses, line items, attachments, 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 line item 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.

### **Instructions to Offerors (APR 2013)**

- (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). An offeror's failure to acknowledge amendments affecting price, quantity, quality or delivery may result in the offeror's proposal being determined unacceptable where award is made without discussions.

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

(1) Unless some other method (e.g., facsimile) is 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 email 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 email 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 is in the judiciary's best interest, the contracting officer determines that accepting the late offer would not unduly delay the procurement, and:
    - (1) there is acceptable evidence to establish that it was received at the judiciary office designated for receipt of offers prior to the time set for receipt; or
    - (2) 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 office includes the time/date stamp of that office on the offer wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of judiciary personnel.
  - (iv) If an emergency or unanticipated event interrupts normal judiciary processes so that offers cannot be received at the office designated for receipt of offers by the exact time specified in the solicitation, and urgent judiciary requirements preclude amendment of the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal judiciary processes resume.
  - (v) Offers may be withdrawn by written notice received at any time before award. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the Provision 3-115, "Facsimile Offers." Offers may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award.
- (4) Unless otherwise specified in the solicitation, offers on less than all items solicited will not be considered.
  - (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 the entire document.

- (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 post award 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.

### **Audit and Records (APR 2011)**

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs If this is a cost-reimbursement, incentive, time-and materials, labor-hour, or price re-determinable contract, or any combination of these, the contractor shall maintain and the contracting officer, or an authorized representative of the contracting officer, will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination will include inspection at all reasonable times of the contractor's plants, or parts of them, engaged in performing the contract.

- (c) Detailed Cost Information

If the contractor has been required to submit detailed cost information in connection with any pricing action relating to this contract, the contracting officer, or an authorized representative of the contracting officer, will have the right to examine and audit all of the contractor's records, including computations and projections, related to:

- (1) the offer for the contract, subcontract, or modification;
- (2) the discussions conducted on the offer(s), including those related to negotiating;
- (3) pricing of the contract, subcontract, or modification; or
- (4) performance of the contract, subcontract or modification.

- (d) Comptroller General

- (1) The Comptroller General of the United States, or an authorized representative, will have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
- (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (e) Reports

If the contractor is required to furnish cost, funding, or performance reports, the

contracting officer or an authorized representative of the contracting officer will have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- (1) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports; and
  - (2) the data reported.
- (f) Availability

The contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter or longer period required by statute or by other clauses of this contract. In addition:

- (1) if this contract is completely or partially terminated, the contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
  - (2) the contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the judiciary's small purchase threshold, and:
- (1) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable type or any combination of these;
  - (2) for which detailed cost information is required; or
  - (3) that require the subcontractor to furnish reports as discussed in paragraph
- (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the contracting officer under the judiciary prime contract.

#### **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: 315-234-8654.
- (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.

**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.

**Authorized Negotiators (JAN 2003)**

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

Name: \_\_\_\_\_  
Titles: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

## 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.

## Protests (SEP 2010)

- (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 protestor 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 protestor;
    - (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 protestor is an interested party for the purpose of filing a protest; and

- (viii) all information establishing the timeliness of the protest.
- (c) Unless stated otherwise elsewhere in this solicitation, protests that are filed directly with the judiciary, and copies of any protests that are filed with an external forum, shall be served on the contracting officer at the Issuing Office address on the standard form, if any, or elsewhere in this solicitation. Written and dated acknowledgment of receipt must be obtained from the Contracting Officer issuing this solicitation, or authorized designee.
- (d) The copy of any protest shall be received in the office design

### **Type of Contract (JAN 2003)**

The judiciary plans to award a *firm fixed price* type of contract under this solicitation, and all offers shall be submitted on this basis. Alternate offers based on other contract types will not be considered.

### **Contract Administration (JAN 2003)**

- (a) The contracting officer and contracting officer's representative for the contract will be the judiciary's primary points of contact during the performance of the contract. The contracting officer responsible for the administration of this contract will provide a cover letter providing the contracting officer's name, business address, e-mail address, and telephone number. Written communications from the contractor shall make reference to the contract number and shall be mailed to the address provided in the cover letter. Communications pertaining to contract administration matters will be addressed to the contracting officer.
- (b) Notwithstanding the contractor's responsibility for total management during the performance of this contract, the administration of this contract will require the maximum coordination between the judiciary and the contractor. All contract administration will be effected by the contracting officer except as may be redelegated.  
In no event will any understanding or agreement, contract modification, change order, or other matter in deviation from the terms of this contract between the contractor and a person other than the contracting officer be effective or binding upon the judiciary. All such actions shall be formalized by a proper contractual document executed by the contracting officer.

### **Contracting Officer's Representative (APR 2013)**

- (a) Upon award, a contracting officer's representative (COR) may be appointed by the contracting officer. The COR will be responsible for coordinating the technical aspects of this contract and inspecting products/services furnished hereunder; however, the COR will not be authorized to change any terms and conditions of the resultant contract, including price.
- (b) The COR, if appointed, may be assigned one or more of the following responsibilities:

- (1) monitoring the contractor's performance under the contract to ensure compliance with technical requirements of the contract;
- (2) notifying the contracting officer immediately if performance is not proceeding satisfactorily;
- (3) ensuring that changes in work under the contract are not initiated before written authorization or modification is issued by the contracting officer;
- (4) providing the contracting officer a written request and justification for changes;
- (5) providing interpretations relative to the meaning of technical specifications and technical advice relative to contracting officer's written approvals, and
- (6) providing general technical guidance to the contractor within the scope of the contract and without constituting a change to the contract.

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

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

Name:

Address:

Telephone:

E-mail:

Fax:

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

### **Security Requirements (APR 2013)**

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

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

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

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

"Judiciary IT resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives,

computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(b) Requirements.

Contractor employees working on this contract must complete such forms as may be necessary for security purposes or other reasons. Completed forms shall be submitted as directed by the Contracting Officer's Representative (COR). Depending upon the level of access required to judiciary facilities or IT resources for performance of the work, contractor employees may be subject to any of the following types of security checks: Fingerprint Check Credit Check National Agency Check with Inquires (NACI) National Agency Check with Inquiries and Credit (NACIC) National Agency Check with Law and Credit (NACLIC) Single Scope Background Investigation (SSBI) Single Scope Background Investigation – Periodic Reinvestigation (SSBIPR) Public Trust Special Background Investigation (PTSBI) Citizenship and Immigration Services (CIS) Check Contractor employees visiting court sites to provide support covered under this contract may be subjected to additional FBI screening and U.S. Marshal inspection.

(c) Exemption.

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

(d) Facility Access Cards (FAC).

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

(e) Control of access.

The judiciary shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to judiciary facilities and IT resources. The COR will notify the contractor immediately when the judiciary has determined that an employee is unsuitable or unfit to be permitted access to a judiciary facility following the completion of any of the security checks/investigations listed in (b) above, or as a result of new information obtained at any time during the contractor's performance. The contractor shall immediately notify such employee that he/she no longer

has access to any judiciary facility and/or judiciary IT resources, remove the employee from any such facility that he/she may be in, and provide a suitable replacement who must comply with the requirements of this and other applicable clauses. In addition, the contracting officer may require the contractor to prohibit individuals from access to judiciary facilities or IT resources if the judiciary deems their initial or continued access contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

- (f) The contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may be required to have routine physical access to a judiciary facility or routine access to a judiciary IT resource.
- (g) The judiciary reserves the right to refuse to grant facility access for any contractor employee who has been convicted of a felony.

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

- (a) The contractor assumes full responsibility for and shall indemnify the judiciary against any and all losses or damage of whatsoever kind and nature to any and all judiciary property, including any equipment, products, accessories, or parts furnished, while in its custody and care for storage, repairs, or service to be performed under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of the contractor, any subcontractor, or any employee, agent or representative of the contractor or subcontractor.
- (b) If due to the fault, negligent acts (whether of commission or omission) and/or dishonesty of the contractor or its employees, any judiciary-owned or controlled property is lost or damaged as a result of the contractor's performance of this contract, the contractor shall be responsible to the judiciary for such loss or damage, and the judiciary, at its option, may, in lieu of requiring reimbursement therefore, require the contractor to replace at its own expense, all property lost or damaged.
- (c) **Hold Harmless and Indemnification Agreement**  
  
The contractor shall save and hold harmless and indemnify the judiciary against any and all liability claims and cost of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any contractor property or property owned by a third party occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation, or performance of work under the terms of this contract, resulting in whole or in part from the acts or omissions of the contractor, any subcontractor, or any employee, agent, or representative of the contractor or subcontractor.
- (d) The contractor shall indemnify and hold the judiciary, its employees, and others acting on its behalf harmless against any and all loss, liability, or damage arising out of the negligence, failure to act, fraud, embezzlement, or other misconduct by the contractor, its employees, subcontractors, agents, or representatives of the contractor or subcontractor.
- (e) **Judiciary's Right of Recovery**

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

(f) Judiciary Liability

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

**Public Use of the Name of the Federal Judiciary (JAN 2003)**

- (a) The contractor shall not refer to the judiciary, or to any court or other organizational entities existing thereunder (hereinafter referred to as "the judiciary"), in advertising, news releases, brochures, catalogs, television and radio advertising, letters of reference, websites, or any other media used generally by the vendor in its commercial marketing initiatives, in such a way that it represents or implies that the judiciary prefers or endorses the products or services offered by the contractor. This provision will not be construed as limiting the contractor's ability to refer to the judiciary as one of its customers.
- (b) No public release of information pertaining to this contract will be made without prior judiciary written approval, as appropriate, and then only with written approval of the contracting officer.

**Disclosure or Use of Information (APR 2013)**

- (a) Judiciary information made available to the contractor for the performance or administration of this contract shall be used only for those purposes and shall not be used in any other way without the written agreement of the contracting officer. This clause takes precedence over and is an explicit limitation to the rights enumerated in section (d)(2) of Clause 6-60, Rights in Data – General.
- (b) To the extent the information is otherwise publicly available, it is public information and is not restricted by operation of this clause. However, if public information is provided to the contractor for use in performance or administration of this contract in a media, format, or otherwise in a manner in which it is not available the public, such information may not be used for any other purpose by the contractor except with the written permission of the contracting officer. If the contractor is uncertain about the availability or proposed use of information provided for the performance or administration of this contract, the contractor shall consult with the contracting officer

regarding use of that information for other purposes.

- (c) The contractor agrees to assume responsibility for protecting the confidentiality of judiciary records which are not public information. Such information may include, but is not limited to, all employee data and any written and oral information of a personal nature. Such information is to be safeguarded to ensure that it is not improperly disclosed. Each officer or employee of the contractor to whom information may be made available or disclosed shall be notified in writing by the contractor that such information may be disclosed only for a purpose and to the extent authorized herein, and that further disclosure of any such information for a purpose or to an extent not so authorized may subject the person(s) responsible to criminal sanctions imposed by 18 U.S.C. § 641. That section provides, in pertinent part, that whoever without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, will be guilty of a crime punishable by a fine up to \$10,000, or imprisoned up to ten years, or both. The contractor shall obtain written acknowledgment from each officer and employee to whom information is made available, that they are aware of the above penalties associated with unauthorized disclosure. Such acknowledgments are subject to the review of the contracting officer.
- (d) Performance of this contract may require the contractor to access and use data and information, proprietary to the judiciary or to a judiciary contractor, which is of such a nature that its dissemination or use, other than in performance of this contract, would be adverse to the interests of the judiciary and/or others.
- (e) Contractor and/or contractor personnel shall not divulge or release data or information developed or obtained in performance of this contract until made public by the judiciary, except as authorized by the contracting officer. The contractor shall not use, disclose, or reproduce proprietary data which bears a restrictive legend, other than as required in the performance of this contract. Nothing herein will preclude the use of any data independently acquired by the contractor without such limitations or prohibit an agreement at no cost to the judiciary between the contractor and the data owner which provides for greater rights to the contractor.
- (f) The judiciary and contractor agree that neither expects the performance under this contract to involve reporting or handling of classified information or materials. Either party shall notify the other promptly in writing if the expectation of that party changes, and shall include in the notice reasons therefore. If there are sealed records, in camera proceedings or grand jury matters, the contractor shall consult with the contracting officer as to the proper safeguarding, security, and secrecy of the original notes and transcript orders.
- (g) The contracting officer will advise the contractor whenever the judiciary places a service order which will require classified information or materials. The contractor will have the right to decline to provide services, in which event such services shall be outside the scope of this contract.
- (h) The contractor shall hold inviolate and in strictest confidence any and all information of an official nature not for inclusion in the document, any information which the presiding judicial official designates as "off the record" and all classified information

and material.

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

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

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

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

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

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

- (a) Except as provided in paragraphs (b) and (c) this clause, and except for remedies expressly provided elsewhere in this contract, the contractor shall not be liable for loss of or damage to property of the judiciary (excluding the products delivered under this contract) that:
  - (1) occurs after judiciary acceptance of the products delivered under this contract;

and

- (2) results from any defects or deficiencies in the products.
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the judiciary's acceptance of, the products results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel. The term "contractor's managerial personnel," as used in this clause, means the contractor's directors, officers, and any of the contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
- (1) all or substantially all of the contractor's business;
  - (2) all or substantially all of the contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
  - (3) a separate and complete major industrial operation connected with the performance of this contract.
- (c) If the contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the judiciary through purchase or use of the products required to be delivered under this contract or the contractor's performance of services or furnishing of materials under this contract, the contractor shall be liable to the judiciary, to the extent of such insurance or reserve, for loss of or damage to property of the judiciary occurring after judiciary acceptance of, and resulting from any defects or deficiencies in, the products delivered under this contract.

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

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

### **Invoices (APR 2011)**

- (a) Invoices shall be submitted to the address (physical or e-mail) specified in this contract and in accordance with any schedule for payments set forth elsewhere under this contract.
- (b) The office that will make payments due under this contract will be designated in the contract at the time of contract award.

- (c) To constitute a proper invoice, the billing document shall include the following information and/or attached documentation:
- (1) name of business concern and such business's Taxpayer Identification Number;
  - (2) period(s) covered by invoice and invoice date;
  - (3) purchase order or contract number or other authorization for delivery of property or services, e.g., delivery/task order number for orders under indefinite delivery contracts ;
  - (4) for each line item — general description of product delivered or services rendered, measured unit, and associated price;
  - (5) any applicable payment discount terms;
  - (6) total amount billed;
  - (7) a subtotal of any and all fees or credits applied to the invoice;
  - (8) an amount due (if any) or credit balance;
  - (9) name (where practicable), title, phone number, fax number, and complete mailing address of the responsible official to whom payment is to be sent. The "remit to" address shall correspond to the remittance address in the contract;
  - (10) other substantiating documentation or information as required by the purchase/delivery/task order or contract;
  - (11) all follow-up invoices shall be marked "Duplicate of Original." Contractor questions regarding payment information or check identification shall be directed to the relevant paying authority specified in the contract.

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

The provisions of the Prompt Payment Act of 1982 and OMB Budget Circular A125 concerning interest on overdue payments are not applicable to the judiciary. Therefore, interest is not payable under this contract for overdue payments.

### **Payments (APR 2013)**

The judiciary will pay the contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for products delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment will be made on partial deliveries accepted by the judiciary if:

- (1) the amount due on the deliveries warrants it; or

- (2) the contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

Unless authorized elsewhere in this contract, payments will not be made more often than monthly.

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

- (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.
- (b) In connection with any discount offered for prompt payment, time will be computed from the date of the invoice. If the contractor has not placed a date on the invoice, the due date will be calculated from the date the designated billing office receives a proper invoice, provided the judiciary annotates such invoice with the date of receipt at the time of receipt.

For the purpose of computing the discount earned, payment will be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when judiciary offices are closed and judiciary business is not expected to be conducted, payment may be made on the following business day.

### **Extras (JAN 2003)**

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

### **Changes (APR 2013)**

- (a) The contracting officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - (1) drawings, designs, or specifications when the products to be furnished are to be specially manufactured for the judiciary in accordance with the drawings, designs, or specifications;
  - (2) statement of work or description of services to be performed;
  - (3) method of shipment or packing of products;
  - (4) place of delivery of products or place of performance;

- (5) delivery or performance schedule, time (i.e. hours of the day, days of the week, etc.) or place of delivery or performance of services;
  - (6) judiciary-furnished property or facilities.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the contracting officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract.
  - (c) The contractor shall assert its right to an adjustment within 30 days from the date of receipt of the written order. However, if the contracting officer decides that the facts justify it, the contracting officer may receive and act upon an offer submitted before final payment of the contract.
  - (d) If the contractor's offer includes the cost of property made obsolete or excess by the change, the contracting officer will have the right to prescribe the manner of the disposition of the property.
  - (e) Failure to agree to any adjustment.

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

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

### **Payment for Emergency Closures (APR 2013)**

During an emergency closure of the judiciary, or any individual judiciary office, taken in its sovereign capacity for the public good, the judiciary is not obligated to compensate contractors during the emergency closure, unless: 1) the contract specifically requires the contractor to be on-site at the judiciary facility during an emergency closure; 2) the contract specifically provides for compensation to the contractor even when the government acts in its sovereign capacity; or 3) the contractor obtains approval from the contracting officer or designated contracting officer's representative (COR) to perform work at an off-site location.

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

- (a) The contractor shall make the following notifications in writing:
  - (1) when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the contracting officer within 30 days;
  - (2) the contractor shall also notify the contracting officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The contractor shall:
  - (1) maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) provide the contracting officer or designated representative ready access to the records upon request;
  - (3) ensure that all-individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and
  - (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- (c) The contractor shall include the substance of this clause in all subcontracts under this contract.

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

- (a) The judiciary may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that termination is in the judiciary's interest. The contracting officer will terminate by delivering to the contractor a notice of termination specifying the extent of the termination and the effective date.

- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) stop work as specified in the notice;
  - (2) place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities except as necessary to complete the continued portion of the contract;
  - (3) terminate all orders and subcontracts to the extent they relate to the work terminated;
  - (4) assign to the judiciary, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the judiciary shall have the right to settle or to pay any termination settlement offer arising out of those terminations;
  - (5) with written approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement offers arising from the termination of subcontracts; the written approval or ratification will be final for purposes of this clause;
  - (6) as directed by the contracting officer, transfer title and deliver to judiciary:
    - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - and
    - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the judiciary;
  - (7) complete performance of the work not terminated;
  - (8) take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the judiciary has or may acquire an interest;
  - (9) use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in paragraph (b)(6) of this clause, provided, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved in writing by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made

by the judiciary under this contract, credited to the price or cost of the work or paid in any other manner directed by the contracting officer.

- (c) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 120day period.
- (d) After expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the judiciary to remove those items or enter into an agreement for their storage. Within 15 days, the judiciary will accept title to those items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and will correct the list, as necessary, before final settlement.
- (e) After termination, the contractor shall submit a final termination settlement offer to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the offer promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement offer may be received and acted on after the 1 year or any extension. If the contractor fails to submit the offer within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the contractor and contracting officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract will be modified, and the contractor paid the agreed amount. Paragraph (g) of this clause will not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the contractor and the contracting officer fail to agree on the whole amount to be paid because of the termination of work, the contracting officer will pay the contractor amounts determined by the contracting officer as follow, but without duplication of any amounts agreed on under paragraph (f) of this clause:
  - (1) the contract price for completed products or services accepted by the judiciary (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges;
  - (2) the total of:

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

- (2) any claim which the judiciary has against the contractor under this contract; and
  - (3) the agreed price for, or the proceeds of sale of materials, products, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the judiciary.
- (l) If the termination is partial, the contractor may file an offer with the contracting officer for an equitable adjustment of the price(s) of the continued portion of the contract. The contracting officer will make any equitable adjustment agreed upon. Any offer by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the contracting officer.
- (m) (1) The judiciary may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the contracting officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the judiciary upon demand, together with interest computed at the rate established by the Secretary of the Treasury under P. L. 92-41 (85 Stat. 97). Interest will be computed for the period from the date the excess is repaid. Interest will not be charged on any excess payment due to a reduction in the contractor's termination settlement offer because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the contracting officer because of the circumstances.
- (n) Unless otherwise provided in this contract, or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the judiciary, at the contractor's office, at all reasonable times, without any direct charge. If approved in writing by the contracting officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

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

- (a) (1) The judiciary may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
- (i) deliver the products or to perform the services within the time specified in this contract or any extension;

- (ii) make progress, so as to endanger performance of this contract (*but see* paragraph (a)(2) of this clause); or
  - (iii) perform any of the other provisions of this contract (*but see* paragraph (a)(2) of this clause).
- (2) The judiciary's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the contractor does not cure the failure within 10 days (or more if authorized in writing by the contracting officer) after receipt of the notice from the contracting officer specifying the failure.
- (b) If the judiciary terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, products or services similar to those terminated, and the contractor will be liable to the judiciary for any excess costs for those products or services. However, the contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the government in its sovereign capacity or of the judiciary in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform shall be beyond the control and without the fault or negligence of the contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, the judiciary may require the contractor to transfer title and deliver to the judiciary, as directed by the contracting officer, any (1) completed products, and (2) partially completed products, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the contracting officer, the contractor shall also protect and preserve property in its possession in which the judiciary has an interest.
- (f) The judiciary will pay the contract price for completed products delivered and accepted. The contractor and contracting officer will agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The judiciary may withhold from these amounts any sum the contracting officer determines to be necessary to protect the judiciary against loss because of outstanding liens or claims of former lien holders.

- (g) If, after termination, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the judiciary.
- (h) The rights and remedies of the judiciary in this clause are in addition to any other rights and remedies provided by law or under this contract.

### **Disputes (JAN 2003)**

- (a) A contract dispute means a written claim, demand or assertion by a contracting party for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other specific relief arising under or relating to the contract. A dispute also includes a termination for convenience settlement proposal and any request for an equitable adjustment, which is denied. A voucher, invoice, or other routine payment that is not disputed by the parties is not a dispute under this clause.
- (b) A contract dispute shall be filed within 12 months of its accrual and shall be submitted in writing to the contracting officer. The dispute shall contain a detailed statement of the legal and factual basis of the dispute and shall be accompanied by any documents that support the claim. The claimant shall seek specific relief, as provided in paragraph (a) above. However, the time periods set forth here shall be superceded if the contract contains specific provisions for the processing of any claim which would otherwise be considered a dispute under this clause.
- (c) Contracting officers are authorized to decide or settle all disputes under this clause. If the contracting officer requires additional information the contracting officer shall promptly request the claimant to provide such information. The contracting officer will issue a written determination within 60 days of the receipt of all the requested information from the claimant. If the contracting officer is unable to render a determination within 60 days, the claimant shall be notified of the date on which a determination will be made. The determination of the contracting officer shall be considered the final determination of the judiciary.
- (d) The contractor shall proceed diligently with performance of this contract pending resolution of the dispute. The contractor shall comply with the final determination of the contracting officer unless such determination is overturned by a court of competent jurisdiction. Failure to diligently continue contract performance during the pendency of the claim or failure to comply with the final determination of the contracting officer may result in termination of the contract for default or imposition of other available remedies.

