

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS


WASHINGTON, D. C. 20544

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GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-007 VOLUME/PART 14 CHAPTER(S) 1, 2, 4, 6

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

FROM: Judge John D. Bates 

RE: **PROCUREMENT**

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

[Appendix 1B – Solicitation Provisions and Contract Clauses](#)
[Appendix 1C – Matrix of Solicitation Provisions and Clauses \(Including Key\)](#)
[Chapter 2 – Procurement Planning and Preparations](#)
[Chapter 4 – Types of Contracts and Analysis of Offers](#)
[Chapter 6 – Bonds, Insurance, Taxes, and Intellectual Property](#)

The chapter changes are summarized first, followed by the changes to the two appendices.

Significant changes in Chapter 2 include:

- Revision of guidance regarding incremental funding of firm-fixed-price contracts to conform to changes made in Chapter 4.
- Authorizes the PLO, if delegated, to sign off on determinations that no Energy Star or FEMP-designated product is reasonably available meeting the judiciary's needs or those available are not cost effective over the life of the product.

Guide Transmittal 14-007 – Procurement

Significant changes in Chapter 4 include:

- New explanatory material and examples regarding the various contract types.
- New guidance on when firm-fixed-price contracts may be incrementally funded and related use of Clause 4-170.
- Added an exception to PE approval requirements for COCP Level 6 or COCP Level 7 contracting officers.
- Revised the entire section on multi-year contracts to provide clearer guidance for this type of contract, including a new requirement of demonstrated savings of at least 5%.
- Added new guidance on analyzing allowability of self-insurance costs.

Significant changes in Chapter 6 include:

- Added guidance on when to use a new clause regarding deferred delivery of technical data or computer software.

Significant changes in Appendix 1B include:

- Addition of two new clauses: Clause 4-170, Limitation of Judiciary’s Obligation and Clause 6-110, Deferred Ordering of Technical Data or Computer Software.
- Addition of a “flow down” paragraph to Clause 3-25, requiring contractors to incorporate the requirements of this clause in subcontracts.
- Addition of language to Clause 7-30 to clarify that providing past performance information in a proposal regarding a performance of judiciary contracts is not considered “public use” and is not barred by this clause.
- Deleted a paragraph from Clause 7-55 as being an internal policy statement not imposing any contractual duty on the contractor.

Appendix 1C has been updated for the new clauses/provisions incorporated in Appendix 1B.

The significant changes are detailed in the Redline Comparison below, beginning with those in the chapters.

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

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 2 (Procurement Planning and Preparations) follow:]

§ 210 Policy

[. . .]

§ 210.20 Roles and Responsibilities

Initiating and planning procurement actions require a team effort. The team must include staff from both the requesting and purchasing offices. For a court unit, federal public defender organization (FPDO), ~~or the Federal Judicial Center (FJC)~~, or the Judicial Panel on Multidistrict Litigation (JPML), the purchasing office is the office where the procuring function resides; in the Administrative Office (AO), it is the Procurement Management Division (PMD). The requesting office is the organizational unit which initiates a purchase action by identifying a specific need, such as a court unit's IT staff, chambers staff or facility staff. Although other judiciary offices play a role in the procurement process, overall responsibility for the contracting aspects within the procurement process lies with the contracting officer (CO). However, the planning for major purchases is the responsibility of the court unit executive.

[. . .]

§ 210.40 Purchasing Office Responsibilities

The purchasing office will help the requesting office prepare the requirements packages, as needed. COs are responsible for:

[. . .]

- (j) sending all procurement actions exceeding the CO's delegation level to the Procurement Executive (PE) for review (court unit, FPDOs, FJC and ~~FJC~~JPML only);

[. . .]

§ 220.50 Funding Contract Awards

[. . .]

§ 220.50.20 Contract Funding Requirements

The following funding guidance applies regardless of whether or not the funds for a contract are local funds or centrally managed funds. Questions regarding contract funding should be referred to the PE, who will consult with OGC as necessary.

- (a) Firm-fixed-price contracts are generally required to be fully funded, which means obligating funds to cover the entire contract price, even if awarded during a period of a continuing resolution. This includes firm-fixed-price contracts for severable services which cross fiscal years (see: § 220.50.60(b) (Contracts Crossing Fiscal Years)). For example, a firm-fixed-price contract for severable services awarded for the period 04/01/201~~4~~4 through 03/31/201~~2~~5 would normally be fully funded from FY1~~4~~4 funds for performance through 03/31/201~~2~~5.

(1) A firm-fixed-price contract may be incrementally funded only if the contract (excluding any options) or any exercised option is:

(A) For severable services;

(B) For a period of one year or less in length;

(C) Incrementally funded using funds available (unexpired) as of the date the funds are obligated; and

(D) Approved by the PE for a one-time delegation of procurement authority.

(2) An incrementally funded fixed-price contract should be fully funded as soon as funds are available.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 220.60 Energy and Environmental Considerations

[. . .]

§ 220.60.30 Statutory Exemption

The judiciary is not required to purchase an ENERGY STAR® or FEMP-designated product, if the chief judge, FPD, FJC Director (or Procurement Liaison Officer, if delegated), or PE determines:

- (a) there is no ENERGY STAR® or FEMP-designated product reasonably available which meets the judiciary's requirements; or

[. . .]

[Significant changes in Chapter 4 (Types of Contracts and Analysis of Offers) follow:]

§ 410 Contract Types

§ 410.10 In General

- (a) The terms "contract type" and "type of contract" refer to the contract compensation arrangement (i.e., the method of determining the amount which the judiciary must pay to the contractor under the contract). There is no single contract type that is right for every contracting situation.
- (b) The choice of contract type should be based on the allocation of risks and responsibility between the judiciary and the contractor. Under a firm-fixed-price contract, the contractor assumes full cost and performance responsibility. The contractor undertakes less cost and performance risk from uncertainties under cost-reimbursement, labor-hour and time-and-material contracts. Where the contractor does not take on the cost and performance risk, it must be assumed by the judiciary. (i.e., the contractor may be legally entitled to payment exceeding the original amount of the contract).
- (c) The profit or fee calculations will also reflect the cost and performance cost responsibilities resulting from the contract type selected. Generally, a contractor ~~will be able to collect more~~ may realize greater profit ~~or fee~~ as it assumes increased cost risks and performance risks. For example, in a firm-fixed-price contract, the contractor usually realizes an additional dollar of profit for every dollar reduction in the cost of performance. At the opposite end of the risk spectrum, in a cost-plus-fixed-fee contract, the contractor does not realize any increase in profit if the actual cost of performance is less than estimated at the time of contract award.

§ 410.10.20 Required Documentation

The use of firm-fixed-price contracts requires no documentation explaining why that contract type was chosen. The use of any other contract type requires that the procurement file include a written determination, signed by the contracting officer (CO), explaining why a different contract type was chosen and signed by the Contracting Officer (CO), must be included in the contract file whenever a contract type other than firm-fixed-price is used. The determination of contract type is one of the first steps in the procurement process, since most solicitations are required to notify prospective offerors of the planned contract type. See: § 410.15.20 (Solicitation Requirements).

§ 410.10.35 Prohibited Contract Type

A cost-plus-a-percentage-of-cost contract may never be used.

REDLINE COMPARISON REFLECTING CHANGES

§ 410.15 Selecting Contract Type

[. . .]

§ 410.15.20 Solicitation Requirements

~~Although contract type is a matter for negotiation, competitive purchasing procedures require that the solicitation specify an intended type of contract to provide a basis for comparing competing offers. Solicitation Provision 4-1, Type of Contract, with the appropriate contract type inserted as indicated, must be included in all solicitations that~~except:

- (a) ~~firm-fixed-price procurements which do not~~ exceed the judiciary's small purchase threshold (see: Guide, Vol 14, § 140 (Contracting Officers Certification Program) and § 325.10.30 (Applicability)), and
- (b) ~~are not~~solicitations for information or planning purposes.

~~Note: The CO will appropriately fill in the provision's blank spaces:~~

§ 410.15.30 Firm-Fixed-Price Contract Preference

A firm-fixed-price contract is generally preferred because it makes the contractor fully responsible for cost control; and performance, and minimizes the need for judiciary monitoring of cost performance. However, when there is no reasonable basis for firm fixed pricing, a solicitation requiring a firm-fixed-price contract may reduce competition. It may also lead to higher prices because compensation offerors will include greater allowances for contingencies will be added by the offerors for protection in their fixed price to protect themselves from real or perceived cost risks. Whenever the probable cost of performance cannot be reasonably estimated, a firm-fixed-price contract should not be used.

~~§ 410.15.40 Use of Incentives for Cost Control~~

~~Note: For example, where it is difficult to completely identify requirements prior to award of a contract, such as in developing a large information technology system like the Case Management/Electronic Case Files (CM/ECF) system, the labor to perform the work cannot be predicted with a sufficient degree of certainty for contractors to be willing to accept the risk of~~ When a firm-fixed-price contract is not appropriate, costs may be controlled by using incentives. Efficient performance is promoted by relating the amount of profit or fee available under the contract to the contractor's ability to manage performance costs effectively. In these circumstances, other contract types should be considered.

~~§ 410.15.40 [Reserved]~~

§ 410.65 Fixed-Price Contract with Economic Price Adjustment

[. . .]

§ 410.65.50 Clauses

~~When contemplating economic~~A solicitation for a fixed-price adjustment in contracts contract with EPA for standard products that have an established catalog or market price must include Clause 4-55, Economic Price Adjustment – Standard Products ~~must be included~~. The offeror will~~must~~ appropriately fill in the clause's blank spaces blank in paragraph (a) of the clause.

REDLINE COMPARISON REFLECTING CHANGES

§ 410.70 Cost-Reimbursement Contracts

[. . .]

§ 410.70.20 Limitations

Any of the cost-reimbursement contracts described below may be used only when:

- ~~(a) no other type of contract is suitable and the PE has given prior written approval;~~
- [. . .]
- (d) no other type of contract is suitable; and
- (e) the PE has issued a one-time delegation of procurement authority. For exceptions to this requirement, see: § 410.20.30 (Exceptions).

§ 410.70.60 Cost-Plus-Fixed-Fee Contract

[. . .]

(c) Completion or Term Form

[. . .]

(1) Completion Form

The completion contract form describes the scope of work by stating a definite goal or target and specifying an end product deliverable. This form of contract normally requires the contractor to complete and deliver the specified end product within the estimated cost, if possible, as a condition for payment of the entire fixed fee. If the work cannot be completed within the estimated cost, the judiciary may require more effort ~~without~~with an appropriate increase in ~~fee, but~~ the estimated cost and associated funding ~~must be increased, but without any increase in fee.~~

[. . .]

§ 410.70.70 Cost-Plus-Award-Fee Contract

(a) Description

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of:

- (1) a base fee amount (which may be zero) fixed at inception of the contract; and
- (2) an award fee amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to be paid is determined by the judiciary's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the judiciary.

REDLINE COMPARISON REFLECTING CHANGES

§ 410.70.70 [cont'd]

(b) Application

[. . .]

(3) Cost-plus-award-fee contracts must provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected. Partial payment of fee must generally correspond to the evaluation periods. ~~This makes effective the incentive which the award fee can create by inducing~~ Payment of the fee in this manner can induce the contractor to improve poor performance or to continue good performance.

(c) Additional Limitation

In addition to the general limitations on cost-reimbursement contracts ~~stated in § 410.70.20; an additional limitation on the use of (Limitations), when using~~ cost-plus-award-fee contracts ~~is that~~, the contract amount, performance period, and expected benefits must be sufficient to warrant the additional administrative effort and cost involved.

§ 410.75 Multi-Year Contracts

§ 410.75.10 Definitions

(a) A multi-year contract is defined as one which – at the time of award – purchases more than one year’s requirement of a product or service, without having to exercise an option for each year after the first. Multi-year contracts may be awarded for known requirements for a period of up to five years. Multi-year contracts are considered an exception to the bona fide needs rule. Use of this contract type by the judiciary is authorized by 28 U.S.C. § 604(g)(4)(B) and 28 U.S.C. § 612(e)(2).

(b) A multi-year contract is **not**:

- an indefinite quantity or requirements contract (**see**: § 410.30 (Indefinite-Delivery Contracts: Indefinite Quantity and Requirements));
- a contract for a non-severable requirement that will take more than one year to complete, such as construction of a new courthouse;
- a contract for 12 months (or less) that includes one or more options to extend the period of performance for additional periods of up to 12 months each (**see**: Guide, Vol 14, § 220.40 (Options)); or
- a contract for less than 12 months that starts in one fiscal year and is completed in the following fiscal year.

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75.20 Terminology Unique to Multi-Year Contracts

(a) Cancellation

~~The cancellation (within a contractually specified time) of the total requirements of all remaining contract years.~~ Cancellation results when the contracting officer notifies the contractor that funds will not be made available for contract performance for ~~any~~ subsequent contract year. A cancellation of any one year results in cancellation of all remaining contract years.

[. . .]

~~(c) Cancellation Charge~~

~~The amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.~~

~~(d) Multi-Year Contract~~

~~A contract for the purchase of products or services for more than 1, but not more than 5, contract years. A multi-year contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multi-year contracts and multiple year contracts is that multi-year contracts represent more than one year's commitment to a vendor without establishing and having to exercise an option for each contract year after the first.~~

~~(e) Fixed Costs~~

~~Those costs that are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.~~

~~(f) Variable Costs~~

~~Costs that vary with the quantity being produced, such as labor and materials.~~

§ 410.75.15 Description

~~(a) A multi-year contracting allows the judiciary to order products or services to meet known requirements over a period of up to a maximum of five years, unless otherwise authorized by statute. Multi-year contracts are not indefinite ordering vehicles and the solicitation and contract are limited to definite known requirements for the proposed multi-year period.~~

~~(b) Multi-year contracts may either be fully funded for the entire multi-year period. The cancellation ceiling must be established and fully funded at the time of contract award. award or may be funded by contract year. For information regarding requirements to fund cancellation charges when annually funding multi-year contracts, see: § 410.75.35(a).~~

~~(c) Multi-year contracting offers flexibility for a wide range of acquisitions. The extent to which cancellation terms are used in multi-year contracts will depend on the circumstances of each contract.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75.20 *[cont'd]*

- ~~(d) The funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs; and multi-year contracts for the acquisition of products should be fully funded or funded in stages that are economically or programmatically viable. If funded in stages, the funding must always include the potential cancellation costs. If fully funded from current year funds and incorporating advance payment terms, it is important to note that payment against those funds may not be made in a single lump amount. For limitations on advance payment, see: Guide, Vol 14, § 220.55.50.~~
- ~~(e) The termination for convenience procedure may apply to any government contract, including multi-year contracts. As contrasted with cancellation, termination can be effected anytime during the life of the contract (cancellation is effected between contract years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent contract years' quantities).~~

§ 410.75.2030 Limitations on Use of Multi-Year Contracts~~ing~~

- (a) One-Time Delegation of Procurement Authority ~~Before issuance of a multi-year solicitation or contract, the CO must obtain~~

With the exception of awards meeting the criteria stated at § 410.75.30(c) (Exception to One-Time Delegation), all multi-year contract awards require a one-time delegation of procurement authority from the PE by first preparing and obtaining PE approval of. Obtaining this delegation is a two-step process and only after both of the steps are completed will the one-time delegation of procurement authority be issued.

- (1) Prior to issuing the solicitation, the CO must request PE approval of the solicitation document.
- (2) Upon receipt and evaluation of offers, the CO must provide the evaluation and the determination and finding required by § 410.75.30(b) (Determination and Finding) for PE approval.

- (b) Determination and Finding

All multi-year contracts, including those meeting the criteria stated at § 410.75.30(c) (Exception to One-Time Delegation), must be supported by a determination addressing and finding signed by the following factors CO confirming:

- (1) The need for the products or services is reasonably firm and ~~continuing~~ is expected to continue over the entire period of the contract; and
- (2) ~~The use of a multi-year contract will serve the best interests of the judiciary by encouraging full and open competition or promoting economy in administration, performance, and operation of the judiciary's programs. Factors that should be addressed within the required determination and finding to the extent that they are applicable include:~~

- ~~(A) lower costs;~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75.30 [cont'd]

- ~~(B) enhancement of standardization;~~
- ~~(C) reduction of administrative burden in the placement and administration of contracts;~~
- ~~(D) substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs;~~
- ~~(E) stabilization of contractor work forces;~~
- ~~(F) avoidance of the need for establishing quality control techniques and procedures for a new contractor each year;~~
- ~~(G) broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs; and~~
- ~~(H) providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.~~
- ~~(b) Once result in a definite cost savings of at least 5% for the judiciary over issuance of annual orders or of a contract with options to extend beyond a base period. The specific pricing information demonstrating the savings must be included in the determination and finding has been approved, the GO may proceed to issue the solicitation if using the lowest price/technically acceptable evaluation method. If the solicitation uses the best value method of evaluation, additional PE approval of the solicitation itself is required before issuance.~~
- ~~(c) All proposed contract awards and the supporting analysis of competing offers (if competitively awarded) must be submitted to the PE for review and issuance of.~~
 - (c) Exception to One-Time Delegation
 - (1) A one-time delegation is not required for a multi-year award for services where the award will be funded with no year funds, e.g., the Judiciary Information Technology Fund; and –
 - (A) the award is an order under a Judiciary-Wide BPA or contract, a GSA schedule, or a contract awarded under another agency's multi-award authority, such as SEWP or NITAAC; or
 - (B) the total amount for all years is less than the judiciary's competition threshold. See: Guide, Vol 14, § 325.15.10 (Competition Threshold).
 - (2) The above exception does not apply to multi-year awards for products, which are always subject to the one-time delegation of authority requirement.

§ 410.75.25 Type of Contract

REDLINE COMPARISON REFLECTING CHANGES

~~§ 410.75.30~~ [cont'd]

~~If a fixed price multi-year contract is planned, the CO may consider inclusion of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements. See: § 410.65 (Fixed-Price Contracts with Economic Price Adjustment):~~

~~(3) Procurement files for awards made under the exceptions to the one-time delegation requirement must include the contracting officer's determination and finding required by § 410.75.15(b) (Determination and Finding).~~

~~(d) Congressional Notification~~

~~A multi-year contract that includes a cancellation ceiling in excess of \$10.0 million may not be awarded until the AO Director provides written notification to Congress of the proposed contract and the proposed cancellation ceiling for that contract. The contract may not be awarded until the thirty-first day after the date of Congressional notification.~~

~~§ 410.75.40 Competitive Multi-Year Solicitation Requirements~~

~~(a) Competitive multi-year solicitations must require dual price proposals from all offerors, one price proposal based upon a multi-year award and one based on pricing for award of a base year and options for each subsequent year. The sole exception is the purchase of commercial services where published catalog prices clearly show lower pricing for a multi-year term versus contracting on an annual basis. In this case, the solicitation may require only multi-year pricing.~~

~~(b) Competitive multi-year solicitations must identify all the evaluation factors to be used in selecting offer(s) for award. Price must always be included as an evaluation factor. The cancellation ceiling must not be used as an evaluation factor.~~

~~§ 410.75.50 Multi-Year Contract Administration~~

~~(a) Funding and Payment~~

~~(1) Multi-year contracts may either be fully funded for the entire multi-year period at the time of award or may be funded annually. When the contract is funded annually, the funding must include the maximum liability incurred by the judiciary each year. This means fully funding the cancellation ceiling amount which would apply under Clause 4-160, Cancellation Ceilings, if the contract were cancelled during the year being funded.~~

~~(2) Authority to award a multi-year contract requirement and fully fund it at the time of award does not automatically include authority to pay the contractor in advance. For limitations on advance payment, see: Guide, Vol 14, § 220.55.50 (Limitations).~~

~~§ 410.75.30-~~

~~(b) Cancellation Procedures.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75.50 [cont'd]

~~(a) All contract years except the first are subject to cancellation. The contract award must state a cancellation ceiling For each contract year subject to cancellation in Clause 4-160, Cancellation Ceilings, the GO will establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior contract years. The GO will reduce the cancellation ceiling for each contract year in direct proportion to the remaining requirements subject to cancellation. If a multi-year contract is not fully funded upon award, but is funded at the beginning of each contract year, the modification obligating each year's funds must also establish and obligate the cancellation ceiling or cancellation charge applicable in the event the contract is cancelled at the end of that contract year.~~

~~(b) The GO will incorporate in the contract cancellation dates for each contract year's requirements and the date by which funding for these requirements can reasonably be established.~~

~~§ 410.75.35-~~

~~(c) Payment of Cancellation Charges~~

~~If cancellation occurs, the government's liability will be determined by the terms of the applicable contract.~~

~~§ 410.75.40 Payment Limit~~

~~The contracting officer will limit the government's obligation to an amount available for contract performance. If funding at the beginning of each contract year, the contracting officer will insert the amount for the first contract year in the contract upon award and modify it for successive contract years upon availability of funds.~~

~~§ 410.75.45 Termination Payment~~

~~If the contract is terminated for the convenience of the government in whole, including requirements subject to cancellation, the government's obligation may not exceed the amount specified in the contract as available for contract performance, plus the cancellation ceiling.~~

~~§ 410.75.50 Basis for Award~~

~~Multi-year contracts may be awarded on either a best value or a lowest price/technically acceptable basis. In either case, the solicitation must identify all the factors related to multi-year contracting that will be considered in offer evaluation including the following specific information:~~

~~(a) The requirements, by item of supply or service, for:~~

~~• the first contract year; and~~

~~• the entire if a multi-year contract including the requirements for each contract year.~~

~~(b) Criteria for comparing the lowest evaluated submission on the first contract year requirements to the lowest evaluated submission on the multi-year requirements.~~

~~(c) A provision that, if the government determines before award that only the first contract year requirements are needed, the government may evaluate offers and make award solely on the basis of prices offered on that year's requirements.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75.50 [cont'd]

- ~~(d) A provision for the vendor to propose a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each contract year subject to a cancellation. The solicitation must also include a requirement that the vendor provide its rationale and supporting data for its proposed cancellation ceiling(s):~~
- ~~(e) A statement that award will not be made on less than the first contract year requirements:~~
- ~~(f) The government's administrative costs of annual contracting (only permissible if they can be reasonably established):~~
- ~~(g) A statement that is cancelled, the judiciary's liability shall be determined in accordance with Clause 4-150, Cancellation Under Multi-Year Contracts, but in no case may it exceed the cancellation ceiling may not be an evaluation factor, established at the time of contract award in Clause 4-160, Cancellation Ceilings. Final agreement on a cancellation settlement must be reviewed and approved by the PE.~~
- ~~(h) All other technical evaluation factors:~~

§ 410.75.55 Price Evaluation

- ~~(a) Evaluation of price offers must include:~~
 - ~~(1) determination of the lowest overall evaluated cost to the government for both the multi-year and the first contract year requirements, and~~
 - ~~(2) comparison of the cost of buying the total requirement under a multi-year acquisition with the cost of buying the total requirement in successive independent acquisitions, or using a contract with option years:~~
- ~~(b) To determine the lowest evaluated unit price, the GO will compare the lowest evaluated offer on the first year alternative against the lowest evaluated offer on the multi-year alternative as follows:~~
 - ~~(1) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first year alternative by the total number of units of that item required by the multi-year alternative;~~
 - ~~(2) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation; and,~~
 - ~~(3) Compare this result against the total evaluated price of the lowest offer on the multi-year alternative:~~
- ~~(c) Where the multi-year acquisition is being competed on a basis other than price alone, the GO must conduct the evaluation based on the evaluation factors contained in the solicitation.~~
- ~~(d) The evaluation procedures contained in this paragraph may be modified if necessary to meet the circumstances of a particular acquisition.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 410.75.50 [cont'd]

§ 410.75.60 Options

Benefits may accrue by including options in a multi-year contract. In that event, COs must follow the requirements in the

(d) Termination for Convenience or Default

Multi-year contracts are subject to termination for convenience or default. Unlike cancellation, which can only be effective at the end of a contract year, termination for convenience or default may be done at any time during the life of the contract. In addition, a termination for convenience may be issued for less than the entire remainder of the contract, whereas cancellation must be for the entirety of all subsequent contract years. PE review and approval is required for any termination. See: Guide, Vol 14, § 755.10.40 (Review and Approval), § 220.40. Options should not include charges for plant and equipment already amortized, or other fixed charges that were included in the basic contract. The total duration of a multi-year contract may not exceed five years.

§ 410.75.65 § 410.75.60 Contract Clauses and Provisions

Include the following clauses in solicitations and contracts for multi-year contracts unless the prescription indicates otherwise:

§ 410.75.650 Contract Clauses and Provisions [table]

<u>Provision or Clause</u>	<u>Include in ...</u>
[. . .] (b) <u>Clause 4-55, Economic Price Adjustment - Standard Products</u>	Fixed-price multi-year solicitations and contracts <u>meeting when the criteria set forth in § 410.65.15 CO considers inclusion appropriate under § 410.65 (Fixed-price Contract with Economic Price Adjustment).</u>
(c) <u>Clause 3-175, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multi-Year and Option Contracts)</u>	Multi-year solicitations and contracts when contracting for services on a fixed-price, labor-hour or time-and-materials basis and the contract includes <u>Clause 3-160, (Service Contract Act of 1965, as amended).</u>
(d) <u>Provision 4-155, Evaluation of Price Proposal – Alternate Awards</u>	<u>All multi-year Contracts solicitations.</u>
(e) <u>Clause 4-160, Cancellation -Period and Ceilings</u>	<u>All multi-year solicitations and contracts. The clause may be tailored as appropriate to fit the actual number of years of a specific multi-year award. The ceilings shall be incorporated at the time of award based upon information provided in the offeror's proposal.</u>

REDLINE COMPARISON REFLECTING CHANGES

§ 420 Technical Analysis

§ 420.10 In General

[. . .]

- (b) Technical analysis of offers may range from evaluating technical offers according to evaluation factors specified in the solicitation (competitive offers) to extensive analysis of materials, number of labor hours and the proposed mix of labor mixcategories, special tooling and facilities, and other factors. At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the proposed mix of labor mixcategories. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

§ 450 Cost Analysis

[. . .]

§ 450.20 Cost Analysis Techniques

Cost analysis involves the following techniques and procedures as appropriate:

[. . .]

- ~~(g) Analyzing any applicable Defense Contract Audit Agency (DCAA) audits for the contractor.~~

§ 450.30 Detailed Cost Information

[. . .]

§ 450.30.40 Subcontract Offer Analysis

As part of its detailed cost information, the offeror or contractor is responsible for submitting to the CO its price analysis or cost analysis on subcontract offers, including the results of its subcontract price reviews and analysis. In unusual circumstances, to ensure that adequate analysis is performed, the CO may require the offeror or contractor to submit, along with its own detailed cost information, ~~the subcontract~~ detailed cost information obtained from its subcontractor(s). This in no way diminishes the offeror's or contractor's responsibility to perform subcontract cost or price analysis and negotiate fair and reasonable subcontract prices.

§ 470.40 Selected Costs

[. . .]

§ 470.40.70 Termination Costs

[. . .]

- (f) Rental ~~uCosts U~~ Under Unexpired Leases

[. . .]

§ 470.40.75 Self-Insurance Costs

- (a) Programs of self-insurance covering a contractor's insurable risks, including the deductible portion of purchased insurance, may be approved and the costs considered allowable when examination of a program indicates that its application is in the judiciary's interest.

REDLINE COMPARISON REFLECTING CHANGES

§ 470.40.75 [cont'd]

- (b) However, programs of self-insurance for catastrophic risks or to protect a contractor against the costs of correcting its own defects in materials or workmanship are not allowable. Should performance of a judiciary contract create the risk of catastrophic losses, the judiciary may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both.

[Significant changes in Chapter 6 (Bonds, Insurance, Taxes, and Intellectual Property) follow:]

§ 650 Rights in Data and Copyrights

[. . .]

§ 650.65 Clauses

Clause or Provision

Include in:

- (j) Clause 6-110, Deferred Ordering of Technical Data or Computer Software

Solicitations and contracts when a firm requirement for a particular data item(s) has not been established prior to contract award but there is a potential need for the data.

Under this clause, the contracting officer may order any data that has been generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such data expires three years after the date the contractor accepts the last item under the subcontract.

When the data is ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the data into the prescribed form, and for costs of reproduction and delivery.

[Significant changes in Appendix 1B (Solicitation Provisions and Contract Clauses) follow:]

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

[. . .]

Provisions, Clauses, Terms and Conditions – Small Purchases (APRJUN 20134)

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

[. . .]

- (2) Provision 3-210, Protests (SEPJUN 20104)

[. . .]

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

[. . .]

- (5) Clause 7-30, Public Use of the Name of the Federal Judiciary (JAJUN 200314)

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

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

[. . .]

Protecting the Judiciary's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAUN 200314)

- (a) The government (including the judiciary) suspends or debars 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.

[. . .]

- (d) Subcontracts. Unless this is a contract for commercial items, the contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for the identification of the parties), in each subcontract that exceeds \$25,000 in value, and is not a subcontract for commercially available off-the-shelf items.

[. . .]

Clause 3-40, Restrictions on Subcontractor Sales to the GovernmentJudiciary

Include the following clause as prescribed in [§ 330.10.30\(h\) \(Provisions and Clauses\)](#).

Restrictions on Subcontractor Sales to the GovernmentJudiciary (JAUN 200314)

[. . .]

Provision 3-210, Protests

[. . .]

Protests (SEPJUN 20104)

[. . .]

- (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 as provided elsewhere in this solicitation. Written and dated acknowledgment of receipt must be obtained from the Contracting Officer issuing this solicitation, or authorized designee.

[. . .]

Clause 4-10, Order Limitations

[. . .]

Order Limitations (APRJUN 20114)

[. . .]

- (d) Notwithstanding paragraphs (b) and (c) of this sectionclause, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within _____ days (*contracting officer specify*) after issuance, with written notice stating the contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the judiciary may acquire the products or services from another source.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-150, Cancellation Under Multi-Year Contracts

Include the following clause as prescribed in [§ 410.75.650\(a\) \(Contract Clauses and Provisions\)](#).

Cancellation Under Multi-Year Contracts (~~APR~~JUN 20134)

- (a) "Cancellation," as used in this clause, means that the judiciary is canceling all line items for all products or services in the contract year(s) subsequent to that in which notice of cancellation is provided. ~~Cancellation shall occur by the date or within the time period specified in the contract, unless a later date is agreed to, if the contracting officer notifies the contractor that funds are not available for contract performance for the subsequent contract year(s).~~
- [. . .]
- (c) If cancellation under this clause occurs, the contractor will be paid a cancellation charge not ~~over~~exceeding the cancellation ceiling specified in the contract as applicable at the time of cancellation.
- [. . .]
- (e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Judiciary clause of this contract. The contractor shall submit the claim promptly but no later than 1 year from the date:
- ~~(1) Of~~ of notification that funds will not be made available for continued performance; ~~or~~
- ~~(2) Specified in the contract by which notification of the availability of additional funds for the next succeeding contract year is required to be issued, whichever is earlier, unless extensions in writing are granted by the contracting officer.~~
- [. . .]

Provision 4-155, ~~Evaluation of Price Proposal – Multi-Year Contract~~Alternate Awards

Include the following ~~provision~~clause as prescribed in [§ 410.75.650\(d\) \(Contract Clauses and Provisions\)](#).

- ~~Evaluation of Price Proposal – Multi-Year Contract (OCT 2006)~~
- ~~In the event that the judiciary determines prior to award that only the first contract year requirements are needed, offers will be evaluated and award made solely on the basis of prices offered on that~~
Alternate Awards (JUN 2014)
- If the solicitation has requested pricing for both a multi-year award and an award of a base year and option years, the judiciary reserves the right to award only the initial year's requirements. The cancellation ceiling shall not be part of the price proposal evaluation requirement, without options.
- [. . .]

Clause 4-160, Cancellation ~~Period and Ceilings~~Period and Ceilings

Include the following clause as prescribed in [§ 410.75.650\(e\) \(Contract Clauses and Provisions\)](#).

Cancellation ~~Period and Ceilings~~Period and Ceilings (JAUN 20104)

The cancellation ~~period referred to in the "Cancellation under Multi-Year Contracts" clause (Clause 4-150) applies to each line item period set forth in Section B, at the quantities as set forth in Section B for each contract year. The cancellation ceilings are~~ceilings applicable to each contract period are set forth below:

REDLINE COMPARISON REFLECTING CHANGES

Contract Year
If Cancellation
Period* Takes Place Before ...
 [. . .]

The Cancellation Ceiling*
Ceiling is ...
 [. . .]

———— * To be completed by Offeror [. . .]

Provision 4-165, Price Proposal Instruction – Multi-Year Contract

Include the following provision as prescribed in [§ 410.75.650\(f\) \(Contract Clauses and Provisions\)](#).

Price Proposal Instruction – Multi-Year Contract (~~OCT~~JUN 2006~~14~~)

~~As indicated in Section H, Offerors are instructed to provide~~ must include in their price proposal a separate cancellation ceiling (on either a percentage or dollar basis) for each contract year subject to cancellation. Price proposals must include the rationale and supporting data for each proposed cancellation ceiling. Upon award, the applicable cancellation ceilings will be inserted in Clause 4-160. These ceiling amounts apply to any claim submitted under Clause 4-150 in the event of actual cancellation of the awarded contract, and will not be part of any price evaluation for award. ~~If actual cancellation occurs after contract award, the Contractor will be required to submit a claim with supporting data which will be subject to negotiation. The amounts established in Section H are merely ceilings.~~

(end)

Clause 4-170, Limitation of Judiciary’s Obligation

Include the following clause as prescribed in [§ 410.25.10\(b\) \(Description\)](#).

Limitation of Judiciary’s Obligation (JUN 2014)

- (a) Contract line item(s) _____ is/are incrementally funded. The sum of \$ * is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.
- (b) For item(s) identified in paragraph (a) of this clause, the contractor agrees to perform up to the point at which the total amount payable by the judiciary, including reimbursement in the event of termination of those item(s) for the judiciary’s convenience, approximates the total amount currently allotted to the contract. The contractor is not authorized to continue work on those item(s) beyond that point. The judiciary will not be obligated in any event to reimburse the contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled “Termination for Convenience of the Judiciary.” As used in this clause, the total amount payable by the judiciary in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-170 [cont'd]

- (c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the contractor will notify the contracting officer in writing at least ninety days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the judiciary, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state: (1) the estimated date when that point will be reached; and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the contracting officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the contractor's notification, or by an agreed substitute date, the contracting officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Judiciary."
- (d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.
- (e) If, solely by reason of failure of the judiciary to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."
- (f) The judiciary may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.
- (g) The termination provisions of this clause do not limit the rights of the judiciary under the clause entitled "Termination for Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.
- (h) Nothing in this clause affects the right of the judiciary to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Judiciary."
- (i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. § 1342.
- (j) The parties contemplate that the judiciary will allot funds to this contract in accordance with the following schedule:

On execution of contract \$ _____

REDLINE COMPARISON REFLECTING CHANGES

Clause 4-170 [cont'd]

(month) (day), (year) \$ _____
(month) (day), (year) \$ _____
(month) (day), (year) \$ _____

(end)

Clause 6-110, Deferred Ordering of Technical Data or Computer Software

Include the following clause as prescribed in § 650.65(j) (Clauses).

Deferred Ordering of Technical Data or Computer Software (JUN 2014)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Data" clause of this contract.

(end)

Clause 7-30, Public Use of the Name of the Federal Judiciary

[. . .]

Public Use of the Name of the Federal Judiciary (JAUN 200314)

- (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 when providing past performance information as part of a proposal submission, as opposed to general public marketing.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

Clause 7-55, Contractor Use of Judiciary Networks

[. . .]

Contractor Use of Judiciary Networks (~~JAN 2003~~ JUN 2014)

- (a) ~~The judiciary is obligated and committed to ensuring that judiciary property and resources are used appropriately and for the public interest. The judiciary shall confront issues involving contractors and their employees to ensure that judiciary property and resources equating to taxpayer dollars are not wasted or used inappropriately.~~
- (b) Whenever authorized ~~as a user of~~ to use judiciary networks, the contractor, subcontractor, teaming partner, and all employees (hereinafter referred to as “entities”), shall **not** perform or participate, directly or indirectly, in any of the following:

[. . .]

[Significant changes in Appendix 1C (Matrix of Solicitation Provisions and Clauses (Including Key)) follow:]

Matrix of Solicitation Provisions and Clauses [table]

Clause or Provision #	Title	Presc. (all references are to Volume 14)	Prov or Cls	IBR ?	UCF Sec	Open Market over \$100,000				T&M LH	A & E	IND DEL	SM PUR	OFAC
						FP PROD	CR PROD	FP SVC	CR SVC					
Provisions and Clauses (Chapter 2)														
2-25A	Delivery Terms and Contractor's Responsibilities	§ 220.25.70(a)	C	Yes	F	R	R	R	R	<u>RA</u>	R	<u>RA</u>	*	A
2-25B	Commercial Bill of Lading Notations	§ 220.25.70(b)	C	No	F	A	A			<u>A</u>		A		
2-30A	Time of Delivery	§ 220.25.70(c)	C	No	F	A	A	A	A	A	A	A	A	
2-30B	Desired and Required Time of Delivery	§ 220.25.70(d)	C	No	F	A	A	A	A	A	A	A	A	
2-40A	Variation in Quantity	§ 220.25.70(f)	C	No	F	A		A				A	A	
Provisions and Clauses (Chapter 4)														
4-20	Requirements	§ 410.30.75(c)	C	Yes	I	A	A	A	A	A	A	A		
4-50	Payment of Allowable Costs Before Definitization (See Note 2)	§ 410.50.80(d)	C	Yes	I	<u>A</u>	A	<u>A</u>	A	A	A	A		
4-155	Evaluation of Price Proposal – Multi-Year Contract <u>Alternate Awards</u>	§ 410.75.65(d)	P	Yes	M	A	A	A	A	A				A
4-160	Cancellation Period and <u>Ceilings</u>	§ 410.75.65(e)	C	No	H	A	A	A	A	A				
4-170	<u>Limitation of Judiciary's Obligation</u>	§ 410.25.10(b)	<u>C</u>	<u>No</u>	<u>I</u>	<u>A</u>		<u>A</u>			<u>A</u>	<u>A</u>		<u>A</u>
Provisions and Clauses (Chapter 6)														
6-40	Federal, State, and Local Taxes	§ 640.30.70(a)	C	Yes	I	A		A		A	A	A		
6-45	Federal, State, and Local Taxes (Noncompetitive Contract)	§ 640.30.70(b)	C	Yes	I	A		A		A	A	A		
6-110	<u>Deferred Ordering of Technical Data or Computer Software</u>	§ 650.65(i)	<u>C</u>	<u>Yes</u>	<u>I</u>	<u>A</u>	<u>A</u>			<u>A</u>		<u>A</u>		<u>A</u>