

Provisions and Clauses (B and Chapter 1)

B.1.1 Definitions

Provision

A term or condition used only in solicitations and applying only before award, e.g., provisions which provide information about how offers will be evaluated. These are generally incorporated at the end of solicitation documents in order to easily omit them from the award document

B.2.1 Solicitation Provisions and Contract Clauses Prescribed in Appendix 1B.

1. (a) [Provision B-1, Solicitation Provisions Incorporated by Reference](#) is included in all solicitations.

Clause B-5, Clauses Incorporated by Reference

Include the following clause as prescribed in [Appx 1B, § B.2.1.\(b\) \(Solicitation Provisions and Contract Clauses Prescribed in Appendix 1B\)](#).

Provision 2-70, Site Visit

Include the following provision as prescribed in [§ 220.25.80\(e\) \(Service-Related Provisions and Clauses\)](#).

1. **Site Visit (JAN 2003)**
Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for a claim after contract award.

(end)

Clause 2-75, Liquidated Damages

Include the following clause as prescribed in [§ 220.30.50 \(Clause\)](#), inserting the amount where indicated.

1. **Liquidated Damages (JAN 2003)**
2. (a) If the contractor fails to complete delivery of the products, or performance of the services within the time specified in this contract, or any extension, the contractor shall, in place of actual damages, pay to the judiciary \$ 125.00 for liquidated damages as agreed for each calendar day of delay.
3. (b) Alternatively, if completion of delivery or performance is delayed beyond the contract dates, the judiciary may, at its sole discretion, terminate this contract in whole or in part under the Termination for Default clause, and the contractor shall be liable for the agreed liquidated

damages accruing until the time the judiciary may reasonably obtain delivery or performance of similar products or services. The liquidated damages will be in addition to excess costs of re-procurement.

4. (c)The contractor will not be charged with liquidated damages when the delay in completion of delivery or performance arises out of causes beyond the control and without the fault or negligence of the contractor.

(end)

Clause 2-90D, Option to Extend the Term of the Contract

Include the following clause as prescribed in § 220.40.60(b)(4) (Option Clauses).

1. **Option to Extend the Term of the Contract (APR 2013)**
2. (a)The judiciary may extend the term of this contract by written notice to the contractor no later than 2 calendar days prior to the contract's current expiration date [*insert the period of time within which the contracting officer may exercise the option*]; provided that the judiciary gives the contractor a preliminary written notice of its intent to extend at least _____ calendar days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the judiciary to an extension.
3. (b)If the judiciary exercises this option, the extended contract shall be considered to include this option clause.
4. (c)The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months) (years).

(end)

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

Include the following clause as prescribed in § 310.50.30(d) (Incidental Items Not on Schedule), § 325.30.20(b) (Written Solicitations), and § 325.45.10(c) (Open Market Purchases).

1. **Provisions, Clauses, Terms and Conditions - Small Purchases (JUN 2014)**
2. (a)The following provisions are incorporated by reference into the request for quotations (RFQ):
 1. (1)Provision 3-70, Determination of Responsibility (JAN 2003)
 2. (2)Provision 3-210, Protests (JUN 2014)
 3. (3)Provision 7-60, Judiciary-Furnished Property or Services (JAN 2003)
3. (b)The contractor shall comply with the following clauses incorporated by reference:
 1. (1)Clause 1-15, Disclosure of contractor Information to the Public (AUG 2004)
 2. (2)Clause 2-60, Stop-Work Order (JAN 2010)
 3. (3)Clause 3-205, Protest After Award (JAN 2003)
 4. (4)Clause 7-20, Security Requirements (APR 2013)
 5. (5)Clause 7-30, Public Use of the Name of the Federal Judiciary (JUN 2014)
 6. (6)Clause 7-35, Disclosure or Use of Information (APR 2013)
 7. (7)Clause 7-85, Examination of Records (JAN 2003)
 8. (8)Clause 7-125, Invoices (APR 2011)
 9. (9)Clause 7-130, Interest (Prompt Payment) (JAN 2003)

10. (10) [Clause 7-135, Payments](#) (JAN 2003) (Payment means acceptance by the inclusion of this clause.)
 11. (11) [Clause 7-140, Discounts for Prompt Payment](#) (JAN 2003)
 12. (12) [Clause 7-150, Extras](#) (JAN 2003)
 13. (13) [Clause 7-185, Changes](#) (APR 2013)
 14. (14) [Clause 7-200, Judiciary Delay of Work](#) (JAN 2003) (Applies for products and fixed-price services.)
 15. (15) [Clause 7-210, Payment for Emergency Closures](#) (APR 2013)
 16. (16) [Clause 7-235, Disputes](#) (JAN 2003)
4. (c) The contractor shall comply with the following clauses, incorporated by reference, unless the stated circumstances do not apply:
1. (1) [Clause B-20, Computer Generated Forms](#) (JAN 2003) (Applies when the contractor is required to submit data on standard or optional forms.)
 2. (2) [Clause 6-60, Rights in Data - General](#) (JUN 2012) (Applies if data will be produced, furnished, or acquired under the purchase order.)
 3. (3) [Clause 7-145, Government Purchase Card](#) (JAN 2003) (Applies when the CO determines that the purchase card can be used to make payments.)
 4. (4) [Clause 2-115, Terms for Commercial Advance Payment of Purchases](#) (APR 2013) (Applies if advance payment will be authorized.)
 5. (5) [Clause 2-115, Alt I](#) (OCT 2006) (Applies if advance payment is authorized for photocopy equipment maintenance.)
 6. (6) The following apply to products only:
 1. a) [Clause 2-25A, Delivery Terms and contractor's Responsibilities](#) (JAN 2003) (Purchase order will specify whether delivery is expected at destination or origin.)
 2. b) [Clause 2-45, Packaging and Marking](#) (AUG 2004) (Applies to fixed-price contracts for products or for a service involving furnishing of products.)
 3. c) [Clause 3-155, Walsh-Healey Public Contracts Act](#) (JUN 2012) (Applies to purchase orders over \$15,000 for the manufacturing or furnishing of products in the United States, Puerto Rico, or the U. S. Virgin Islands.)
 7. (7) The following apply to services only:
 1. a) [Clause 1-1, Employment by the Government](#) (JAN 2003)
 2. b) [Clause 1-5, Conflict of Interest](#) (AUG 2004)
 3. c) [Clause 3-160, Service Contract Act of 1965](#) (JUN 2012) (Applies to any purchase order over \$2,500, the principal purpose of which is to furnish services through the use of service employees for work to be performed in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands, **except** where [Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements](#), **or** [Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services - Requirements](#) apply. See (c)(7)g) and (c)(7)h) below.)
 4. d) [Clause 7-40, Judiciary-Contractor Relationship](#) (JAN 2003) (Applies to services when not involving judiciary information technology funds.)
 5. e) [Clause 7-65, Protection of Judiciary Buildings, Equipment and Vegetation](#) (APR 2013) (Applies when services are performed at a judiciary building.)
 6. f) [Clause 7-205, Payment for Judiciary Holidays](#) (APR 2013) (Applies to time-and-materials or labor-hour contracts.)
 7. g) [Clause 3-215, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements](#) (APR 2011) (Applies if the request for quotation included [Provision 3-195](#) and the contractor certified its compliance with the conditions stated in the provision.)

8. h) [Clause 3-225, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements](#) (APR 2011) (Applies if the request for quotation included [Provision 3-220](#) and the contractor certified its compliance with the conditions stated in the provision.)

5. (d) Inspection/Acceptance

The contractor shall tender for acceptance only those products and/or services that conform to the requirements of this contract. The judiciary reserves the right to inspect or test any products or services that have been tendered for acceptance. The judiciary may require repair or replacement of nonconforming products or re-performance of nonconforming services at no increase in contract price. The judiciary must exercise these rights:

1. (1) within a reasonable period of time after the defect or non-conformance was discovered or should have been discovered; and
2. (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

6. (e) Excusable Delays

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the contracting officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the contracting officer of the cessation of such occurrence.

7. (f) Termination for the Judiciary's Convenience

The judiciary reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the contractor can demonstrate to the satisfaction of the judiciary, using its standard record keeping system, have resulted from the termination. The contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the judiciary any right to audit the contractor's records. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

8. (g) Termination for Cause

The judiciary may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the judiciary, upon request, with adequate assurances of future performance. In the event of termination for cause, the judiciary shall not be liable to the contractor for any amount for products or services not accepted, and the contractor shall be liable to the judiciary for any and all rights and remedies provided by law. If it is determined that the judiciary improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

9. (h) Warranty

The contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(end)

Provision 3-5, Taxpayer Identification and Other Offeror Information

Include the following provision as prescribed in § 325.30.20(b) (Written Solicitations) and § 330.10.30(a) (Provisions and Clauses).

1. Taxpayer Identification and Other Offeror Information (APR 2011)

2. (a) Definitions.

"Taxpayer Identification (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a social security number or an employer identification number.

3. (b) All offerors shall submit the information required in paragraphs (d) and (e) of this provision to comply with debt collection requirements of [31 U.S.C. §§ 7701\(c\)](#) and [3325\(d\)](#), reporting requirements of [26 U.S.C. §§ 6041, 6041A](#), and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

4. (c) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government ([31 U.S.C. § 7701\(c\)\(3\)](#)). If the resulting contract is subject to payment recording requirements, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

5. (d) Taxpayer Identification Number (TIN): _____

1. TIN has been applied for.

2. TIN is not required, because:

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

2. Offeror is an agency or instrumentality of a foreign government;

3. Offeror is an agency or instrumentality of the federal government.

6. (e) Type of Organization:

1. sole proprietorship;

2. partnership;

3. corporate entity (not tax-exempt);

4. corporate entity (tax-exempt);

5. government entity (federal, state or local);

6. foreign government;

7. international organization per [26 CFR 1.6049-4](#);

8. other

7. (f) Contractor representations.

The offeror represents as part of its offer that it is , is not 51% owned and the management and daily operations are controlled by one or more members of the selected socio-economic group(s) below:

1. Women Owned Business

2. Minority Owned Business (if selected then one sub-type is required)

1. Black American Owned
2. Hispanic American Owned
3. Native American Owned (American Indians, Eskimos, Aleuts, or Native Hawaiians)
4. Asian-Pacific American Owned (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru)
5. Subcontinent Asian (Asian-Indian) American Owned (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)
6. Individual/concern, other than one of the preceding.

(end)

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

Include the following clause as prescribed in § 325.25.80(e) (Required Clauses and Provisions).

1. **Service Contract Act – Place of Performance Unknown (JAN 2003)**
2. (a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: **Wichita County Texas**. The contracting officer will request wage determinations for additional places or areas of performance if asked to do so in writing by issuance of the Notice to Proceed.
3. (b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit offers. However, a wage determination will be requested and incorporated in the resultant contract retroactive to the date of contract award, and there will be no adjustment in the contract price.

(end)

Clause 6-20, Insurance – Work On or Within a Judiciary Facility

Include the following clause as prescribed in § 630.20.40(a) (Clauses).

1. **Insurance – Work On or Within a Judiciary Facility (APR 2011)**
2. (a) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the following kinds and minimum amounts of insurance:
 1. (1) Workman's Compensation and Employee's Liability Insurance
The contractor shall comply with applicable federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy. Employer's liability coverage of at least \$100,000 per incident is required.
 2. (2) Automobile Liability Insurance

The contractor shall have coverage at a minimum of \$200,000 per person; \$500,000 per occurrence for bodily injury; and \$20,000 per occurrence for property damage.

3. (3)General Liability Insurance

The contractor shall have coverage at a minimum of \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage.

4. (4)Self-Insurance

If the contractor has been approved to provide a qualified program of self insurance, the contractor must submit any proposed changes to the program to the contracting officer for approval.

3. (b)Prior to beginning performance under this contract, the contractor shall provide the insurance carrier certification of the above minimum amounts.

4. (c)The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.

5. (d)The certification evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the judiciary's interest shall not be effective:

1. (1)for such period as the laws of the state in which this contract is to be performed prescribe; or

2. (2)until 30 days after the insurer or the contractor gives written notice to the contracting officer, whichever period is longer.

6. (e)The contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts under this contract that require work in a judiciary facility and shall require subcontractors to provide and maintain the required insurance. The contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the contracting officer upon request.

(end)

Clause 6-35, Errors and Omissions

Include the following clause as prescribed in § 630.40.50 (Clauses) and § 520.75(j) (Provisions and Clauses).

1. **Errors and Omissions (APR 2013)**

2. (a)The contractor warrants that it is insured for _____ (\$200,000, unless a greater amount is entered by the contracting officer) for errors and omissions per claim in an amount in excess of the minimum set forth in the schedule in the performance of this contract.

3. (b)Unless the contractor's policy is prepaid, noncancellable, and issued for a period at least equal to the term of this contract on an occurrence basis, the contractor shall have the policy amended to include substantially the following provision:

"It is a condition of this policy that the company furnish written notice to the Tim Christnagel 30 days in advance of the effective date of any reduction in or cancellation of this policy."

4. (c)The contractor shall furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any

changes. Insurance shall be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal shall be furnished not later than five days before a policy expires.

(end)

Clause 7-25, Indemnification

Include the following clause as prescribed in § 715.55(f)(Clauses/Provisions).

1. Indemnification (AUG 2004)

2. (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.

3. (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 therefor, require the contractor to replace at its own expense, all property lost or damaged.

4. (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.

5. (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.

6. (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.

7. (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.

(end)

Clause 7-45, Travel

Include the following clause as prescribed in [§ 715.55\(j\)\(Clauses/Provisions\)](#).

1. **Travel (APR 2013)**
2. The contractor may propose travel costs if travel is required for performance of the contract and is an authorized reimbursable expense under the contract. The extent of reimbursement for incurred travel costs will be subject to the limitations set forth in the [Guide to Judiciary Policy, Vol 19, Ch 4 \(Judiciary Staff Travel Regulations\)](#).

(end)

Clause 7-50, Parking

Include the following clause as prescribed in [§ 715.55\(k\)\(Clauses/Provisions\)](#).

1. **Parking (APR 2013)**
2. There is no contractor parking available at the Wichita Falls Post Office/US Courthouse (WFPOC). In the event that this contract requires the delivery of equipment or materials to the WFPOC, the contractor shall park delivery vehicles at designated locations within the WFPOC Complex ONLY WHILE LOADING AND UNLOADING THE VEHICLE. Arrangements for pick-up and delivery at the WFPOC shall be coordinated with the Contracting Officer's Representative (COR) and made in accordance with building management policies.

(end)

Clause 7-95, Contractor Inspection Requirements

Include the following clause as prescribed in [§ 220.10.70\(d\) \(Clauses for Inclusion in Solicitations or Contracts\)](#).

1. **Contractor Inspection Requirements (JAN 2003)**
2. The contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the products or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any judiciary inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the judiciary.

(end)