

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

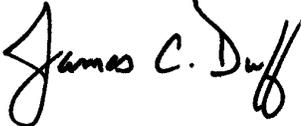
WASHINGTON, D. C. 20544

Date: 01/07/2015

GUIDE TO JUDICIARY POLICY

TRANSMITTAL 14-008 VOLUME/PART 14 CHAPTER(S) 1, 2, 5

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: James C. Duff 

RE: **PROCUREMENT**

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

[Chapter 1 – Overview](#)

[Appendix 1D – Contracting Officers' Certification Program \(Level 1 Purchase Card Program\)](#)

[Appendix 1F – Contracting Officers Certification Program \(Level 3\)](#)

[Chapter 2 – Procurement Planning and Preparation](#)

Appendix 2A – Sample Evaluation Factors *[eliminated]*

[Chapter 5 – Special Categories of Procurements](#)

Chapter 1 was updated to clarify guidance regarding Volume 14 dollar thresholds; add the FJC Director, and the Chair of the Judicial Panel on Multidistrict Litigation to the general delegation to Chief Judges and FPDs; clarify that multiple Procurement Liaison Officers (PLOs) should not be appointed for the same court unit; remove general stewardship and fiduciary materials as being more appropriate to other volumes of the *Guide*; clarify the use of the purchase card as a payment method for written contracts; add a requirement for COCP Level 1 contracting officers to repeat the online training every two years; clarify when the two year period for continuing education for COCP Level 3 begins; change the dollar threshold for Procurement Integrity Act reporting from \$100,000 to \$150,000; and define and provide examples of unauthorized commitments.

Appendix 1D was updated to include the requirement to repeat the online training every two years.

Guide Transmittal 14-008 – Procurement

Appendix 1F had conforming updates to change the title of the two-day classroom course and in the general delegation section title change made to Chapter 1.

Chapter 2 was changed to clarify guidance on funding service contracts that cross the fiscal year and to conform with the general delegation section title change made to Chapter 1. Appendix 2A (Sample Evaluation Factors) has been eliminated as part of this update, since it did not represent policy, but merely provided examples. PMD's JNet solicitation templates are being updated to incorporate the examples from this appendix as well as additional examples.

Chapter 5 was revised to incorporate a new section addressing contracts for experts or consultants support for Judicial Conference committees; to clarify guidance on personal service contracts; to reorganize materials on nonpersonal services contracts for experts or consultants; and to conform with the general delegation section title change made to Chapter 1.

The significant changes are detailed in the Redline Comparison below.

Questions regarding this transmittal may be directed to the AO Department of Administrative Services, Budget, Accounting, and Procurement Office, Procurement Management Division, at 202-502-1330.

REDLINE COMPARISON REFLECTING CHANGES

[Significant changes in Chapter 1 (Overview) follow:]

§ 110 Overview

[. . .]

§ 110.55 Application of Dollar Thresholds

[. . .]

- (b) For purposes of determining whether a specific procurement is or is not in excess of any specified dollar threshold, the dollar value used must ~~include~~ represent the full amount of the procurement award, including shipping and installation costs, if applicable, as well as the estimated value of all contract options which might apply to that procurement. For additional information about contract options, see: [Guide, Vol 14, § 220.40 \(Options\)](#).

REDLINE COMPARISON REFLECTING CHANGES

§ 120 Delegation of Procurement Authority

§ 120.10 Section Overview

§ 120.10.10 Authority to Contract and Delegate

~~Under 28 U.S.C. § 602(d), t~~The Director of the AO may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of government as the Director may designate, subject to such terms and conditions as the Director may consider appropriate. The Director may authorize thehas been granted procurement authority under 28 U.S.C. § 604(a)(10)(c), with the power to delegate and to authorize successive re-delegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.~~See: § 130.20.25 (Authorization for Contracting and Delegating).~~

§ 120.20 Authorized Delegations

§ 120.20.10 ~~The Director~~ Delegations

[. . .]

(b) Delegation to Chief Judges and ~~Federal Public Defenders~~Certain Judiciary Officials

(1) The Director has delegated procurement authority ~~to chief judges and federal public defenders (FPDs) up to~~within the limits described in Levels 1, 2 and 3 of the Contracting Officers Certification Program (COCP) to the following judiciary officials: chief judges, federal public defenders (FPDs), the Chair of the JPML, and the Director of the FJC. Such authority may be exercised to procure products and services within the provisions of the *Guide*, Procurement Manuals, and Procurement Bulletins. This authority may be re-delegated in accordance with this chapter of the *Guide*. **See also:** [§ 140 \(Contracting Officers Certification Program\)](#).

(2) This general delegation ~~to chief judges and federal public defenders~~ does **not** include any of the following actions, which must be forwarded to the ~~Procurement Executive (PE)~~PE for coordination and response:

[. . .]

(c) **See also:**

[. . .]

- ~~Delegation to Chief Judges and Federal Public Defenders~~Other Judiciary Officials ([§ 120.20.40\(b\)40](#))

[. . .]

§ 120.20.40 Chief Judges and ~~Federal Public Defenders~~Other Judiciary Officials

Chief judges and ~~federal public defenders~~other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) are authorized to re-delegate oversight and procurement authority to a Procurement Liaison Officer (PLO) ~~within their court unit~~, in compliance with the limitations specified in the COCP, with the PLO having authority to re-delegate procurement authority to contracting officers (COs).

REDLINE COMPARISON REFLECTING CHANGES

§ 120.20.60 Cancellations, Suspensions, and Limitations on Procurement Authority

[. . .]

(b) Authority to Cancel, Suspend, or Limit Procurement Authority

Delegations of procurement authority may be canceled, suspended, or further limited by the person making the delegation—~~PLO, the chief judge, the federal public defender, or the PE.~~ No cancellation or suspension of procurement authority may operate retroactively so as to invalidate contracts which were otherwise valid at the time of award.

(c) When Delegations Must be Re-Issued

The general delegation of authority from the Director to chief judges, ~~FPDs,~~ and ~~the FJC Director~~other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) is delegated to the position and is not required to be re-issued by the Director upon appointment of a new ~~chief judge or FPD or a new FJC Director~~person to any of the named positions.

§ 120.20.60 [cont'd]

A delegation of PLO authority ~~by a chief judge or FPD~~ is not required to be re-issued upon appointment of a new chief judge, FPD, FJC Director or FPD JPML Chair, unless a different person is being appointed as PLO.

The appointment of a new PE or PLO automatically voids the CO delegation(s) made by the prior PE or PLO. The new PE or PLO must issue new CO delegation(s). ~~In situations w~~Where a PLO has also been appointed as a COCP contracting officer at any level, although the PLO delegation ~~may~~is not ~~be~~ required to be re-issued, the contracting officer delegation is automatically voided by appointment of a new chief judge, FPD, JPML Chair or FPD FJC Director, and must be re-issued for the individual to continue to act as a contracting officer.

§ 120.30 Types of Delegation

§ 120.30.10 General Delegation

The Director has made a broad general delegation of procurement authority to chief judges and ~~federal public defenders~~other judiciary officials. See: § 120.20.10(b) (Authorized Delegations Delegation to Chief Judges and Certain Judiciary Officials).

§ 130 Procurement

[. . .]

§ 130.20 Procurement Statutes

[. . .]

§ 130.20.35 Procurement Integrity Act

The Procurement Integrity Act, 41 U.S.C. § 2101, et seq., imposes certain restrictions and statutory penalties relative to obtaining/disclosing ~~vendor proposal~~ data as well as restrictions on certain employees engaging in employment contacts with and/or accepting compensation from contractors after leaving judiciary employment.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 130.30 Procurement Oversight

[. . .]

§ 130.30.10 Policy

Oversight involves administering and managing the procurement program.

- (a) The Director

The Director delegates procurement oversight responsibility to the chief judges and ~~federal public defenders~~other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) through this chapter of the Guide.

- (b) Chief Judges and ~~Federal Public Defenders~~Other Judiciary Officials

The chief judge or ~~federal public defender~~other judiciary official may re-delegate oversight responsibility for procurements conducted under their authority to a PLO ~~in each court unit or federal public defender organization (FPDO)~~. Appointment of multiple PLOs for the same judiciary unit is not authorized.

[. . .]

§ 130.30.10 [cont'd]

- (d) Required Documentation

The re-delegation of oversight responsibility ~~from the chief judge or federal public defender~~ to a PLO is effected using the Form AO 374 (Delegation of Procurement Liaison Officer).

§ 130.30.20 Procurement Liaison Officer Oversight Responsibilities

Individuals appointed as PLOs have oversight responsibility for administering and managing the procurement program throughout their specific ~~court~~judiciary unit ~~or FPDO~~. This includes complying with this chapter of the *Guide*, Procurement Manuals, and Procurement Bulletins, as well as establishing an internal control program in compliance with the Guide, Vol 11, Ch 3, Procurement. Appointment as a PLO does not, in itself, constitute authority to act as a contracting officer. **See also:** § 120.20.45 (Contracting Officers); § 140.15.30 (Appointment Process for PLOs and COs (Levels 1-3)); § 130.40 (Procurement Liaison Officers).

§ 130.30.40 ~~[Reserved] Chief Judge and Federal Public Defender Oversight Responsibilities~~

~~Chief judges and federal public defenders have a leadership role in court unit or FPDO management and stewardship, including management oversight responsibilities for official funds, personnel, and property. These stewardship responsibilities extend to the procurement process.~~

§ 130.30.50 ~~[Reserved] Court Unit Executive and Federal Public Defender Fiduciary Responsibilities~~

~~FPDs and court unit executives, whether or not they are the designated PLO with procurement oversight responsibility, are responsible for managing allotments made to the court units and FPDOs for procurement. They must provide internal controls which ensure that funds are available in current fiscal year allotments. They must also ensure that correct object classes are used for each contract awarded.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 130.30.60 ~~[Reserved]~~ Handbook on Management Oversight and Stewardship

The Handbook on Management Oversight and Stewardship was developed for chief judges, court unit executives, FPDs, and administrators. This handbook:

- describes key management responsibilities;
- suggests ways to exercise leadership and oversee administrative operations of the court, and
- provides a quick reference guide to court unit executives and other managers to assist chief judges and federal public defenders to carry out their stewardship responsibilities.

See also: Guide, Vol 11 (Internal Control).

§ 130.30.70 Documentation of Procurement Delegations

(a) Policy

Delegations of procurement authority ~~by chief judges (i.e., federal public defenders, or PLOs~~ (designations of PLOs, COs, or conditionally appointed procurement officers) must be:

- ~~transmitted~~ provided to the delegate or appointee,
- ~~transmitted (copies) to retained in~~ the chief judges' or federal public defenders' administrative files of the judiciary unit of the PLO, CO or conditionally appointed procurement officer, and
- entered into the Procurement Delegation System established in [InfoWeb](#).

See also: [§ 140.15.30 \(Appointment Process for PLOs and COs \(Levels 1-3\)\)](#).

(b) Maintenance of Delegation Records

Copies of procurement authority delegations must be maintained and current at all times and are subject to audit review. Procurement liaison officers should make any additions, deletions, and corrections, and insert delegated procurement level(s) for conditionally appointed procurement officers and COs. Copies of one-time delegations from the Procurement Executive PE must be maintained within the relevant contract file. **See also:** [§ 140.15- \(Certification Level Overview\)](#) and [Vol 11, § 340.30 \(Appropriate Records and Documentation\)](#).

§ 130.40 Procurement Liaison Officers

§ 130.40.10 Selection

Chief judges ~~or federal public defenders~~ and other judiciary officials identified at [§ 120.20.10\(b\) \(Delegation to Chief Judges and Certain Judiciary Officials\)](#) should adopt a process by which individuals are selected as PLOs. Generally, chief judges designate court unit executives as PLOs.

REDLINE COMPARISON REFLECTING CHANGES

§ 130.40.20 Appointment Documentation

Every PLO designation ~~by a chief judge or federal public defender~~ must be in writing using [Form AO 374 \(Delegation of Procurement Liaison Officer\)](#). When it is desired for a PLO to also be a contracting officer, the [Form AO 375 \(Procurement Liaison Officer's Appointment of Contracting Officer\)](#) must be used, modifying the form appropriately for signature by the appointing chief judge or ~~federal public defender~~judiciary official. **See also:** [§ 130.40.40 \(Training Requirements\)](#).

[. . .]

§ 140 Contracting Officers Certification Program

[. . .]

§ 140.15 Certification Level Overview

[. . .]

§ 140.15.15 Certification Levels [table]

Certification Level	Who may be appointed	Who may delegate the authority
1	AO and court staff members	The PE, Chief judges and <u>and</u> federal public defenders (FPDs), <u>JPML Chair, FJC Director</u> , PLOs
2	AO and court staff members	The PE, Chief judges and <u>and</u> FPDs, <u>JPML Chair, FJC Director</u> and PLOs
3 [. . .]	AO and court staff members	The PE, Chief judges and <u>and</u> FPDs, <u>JPML Chair, FJC Director</u> and PLOs

§ 140.15.30 Appointment Process for PLOs and COs (Levels 1-3) [table]

1	The chief judge or federal public defender <u>other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)</u> selects and appoints a PLO in each court unit (normally the court unit executive) or federal public defender organization <u>judiciary unit</u> to administer and manage the procurement program throughout the court unit or federal public defender organization . See: § 130.40.20 (Appointment Documentation) .
2 [. . .]	If the PLO is also appointed as a contracting officer, then: (1) the PLO must complete all training requirements for the applicable COCP appointment level, and (2) the chief judge or FPD <u>other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)</u> issues a separate delegation to the PLO using Form AO 375 (Procurement Liaison Officer's Appointment of Contracting Officer) . A PLO cannot appoint him/herself as a CO. [. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 140.20 Level 1 Certification: Purchase Card Program

[. . .]

§ 140.20.30 Level 1 Delegation

A delegation of Level 1 authority includes use of the judiciary purchase card for:

- open market procurements, with or without competition, up to \$5,000 per purchase,
- orders placed under GSA federal supply schedules up to GSA's defined competition threshold (**see:** [Guide, Vol 14, § 310.50.43 \(Required Ordering Procedures\)](#)), and
- orders placed under judiciary-wide contracts or blanket purchase agreements (BPA) up to the specified maximum order threshold of the contract or BPA when the contract or BPA does not require competition, and explicitly authorizes orders to be placed using the purchase card.

Note: These limits apply only to use of the card as both purchase and payment method when no other written contract exists. They do not apply when the card is used solely for payment of a written contract signed by a higher level COCP contracting officer and awarded under conventional contracting procedures. Such contracts must include Clause 7-145, Government Purchase Card, specifically authorizing payment to be made using the card. See: Judiciary Purchase Card Program Manual, Section 1 – Introduction, 1.6 General Guidelines for Use of the Card.

§ 140.20.40 Training Requirements

To be eligible for appointment as a Level 1 CO, individuals must complete the online [Judiciary Purchase Card Program Training \(Course 2\)](#), and repeat the online course every two years.

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 140.30 Level 3 Certification: General Delegation

[. . .]

§ 140.30.30 Level 3 Delegation

A delegation of Level 3 authority includes:

[. . .]

(g) IT procurements using less than full and open competition up to \$25,000 with signed approval of the chief judge, ~~federal public defender, or FJC Director~~ or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).

(h) Interagency agreements (IAs) and memoranda of understanding (MOUs) for procurements up to \$100,000 when the judiciary is the receiving agency. However, all such IAs and MOUs for procurements require review and approval by the chief judge, ~~federal public defender, or FJC Director~~ (or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated), prior to CO signature. If the proposed IA or MOU is above this delegation authority or if the judiciary is the providing agency, the IA/MOU must be referred to the PE. Applicability of a statutory authority other than the Economy Act must be validated by the PE. **See also:** [Guide, Vol 14, Ch 5 \(Special Categories of Procurements\)](#).

[. . .]

(k) Unlimited authority for the procurement of transit passes/vouchers using less than full and open competition with signed approval of the chief judge, ~~federal public defender, or FJC Director~~ or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).

(l) Unlimited authority for the sole source procurement of non-commercial products or services available only from state or local government entities, with signed approval of the chief judge, ~~federal public defender, or FJC Director~~ or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated).

§ 140.30.40 Delegation Limitations

(a) In addition to the exclusions stated at § 120.20.10(b)(2) (Delegation to Chief Judges and Certain Judiciary Officials), a delegation of Level 3 authority does not include authority for the following procurements:

[. . .]

§ 140.30.50 Training Requirements

To be eligible for appointment as a Level 3 CO, individuals must complete both the online [Judiciary Basic Procurement Seminar \(Course 3\)](#) and the Judiciary Procurement Workshop classroom training, as well as the online [Appropriations Law for the U.S. Courts \(Course 4\)](#). In addition, individuals appointed as Level 3 COs must complete 16 hours of continuing education training every two years. The two-year period begins on the date of appointment or upon completion of the Judiciary Procurement Workshop, required to be completed within one year of appointment, whichever is later. **See also:** [§ 140.15.30 \(Appointment Process for PLOs and COs \(Levels 1-3\)\)](#) and [Appx 1F \(Contracting Officers Certification Program \(Level 3\)\)](#).

REDLINE COMPARISON REFLECTING CHANGES

§ 140.40 Level 5 Certification: General Delegation

[. . .]

§ 140.40.20 Authority and Delegation

A delegation of Level 5 authority confers procurement authority up to \$100,000 subject to the policies and procedures as set forth in:

[. . .]

- AO ~~Manual; and~~

—•— internal policies ~~of the Procurement Management Division~~ and procedures.

§ 140.45 Level 6 Certification: General Delegation

[. . .]

§ 140.45.20 Authority and Delegation

A delegation of Level 6 authority confers procurement authority up to \$1,000,000 subject to the policies and procedures as set forth in:

[. . .]

- AO ~~Manual; and~~

—•— internal policies ~~of the Procurement Management Division~~ and procedures.

§ 140.50 Level 7 Certification: General Delegation

[. . .]

§ 140.50.20 Authority and Delegation

A delegation of Level 7 authority confers unlimited procurement authority subject to the policies and procedures as set forth in the following:

[. . .]

- AO ~~Manual; and~~

—•— internal policies ~~of the Procurement Management Division~~ and procedures.

§ 150 Procurement Integrity and Ethics

[. . .]

§ 150.20 Procurement Integrity Act

[. . .]

§ 150.20.25 Provisions of the Act

[. . .]

- (c) Employees' Required Actions When Contacted About Employment

Under [41 U.S.C. § 2103](#), any judiciary employee, personally and substantially participating in a judiciary procurement in excess of \$1~~05~~0,000 who contacts or is contacted by a bidder or offeror in that procurement regarding possible non-federal employment, must:

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 150.20.35 ~~[Reserved]~~Implementation Responsibilities

~~The Act imposes on each judiciary employee the responsibility to conform with the Act.~~

~~———— (a) ——— Ethics Official~~

§ 150.20.40 Questions About Procurement Integrity Policies

The Director has designated the General Counsel of the AO as the ethics official for the Act.

~~———— (b) ——— AO Procurement Management Division~~

~~———— The AO Procurement Management Division must train conditionally appointed procurement officers and COs on procurement integrity. The minimum requirement is to provide all PLOs with a copy of the Act. This requirement may be met by distributing this chapter of the Guide.~~

~~———— (c) ——— Procurement Liaison Officers~~

~~———— PLOs must provide a copy of the material covering the Procurement Integrity Act to every employee within the court unit or federal public defender organization who may fall under this law, including conditionally appointed procurement officers, COs, and assistants.~~

§ 150.20.40 Questions About Procurement Integrity Policies

Anyone with questions concerning procurement integrity policy should be directed to PMD or the AO Office of the General Counsel (OGC). In instances not clearly defined or not covered by the policies in this section, judiciary employees are to seek guidance from the OGC. Judiciary employees or former employees may request a written advisory opinion from the OGC.

§ 150.20.45 ~~[Reserved]~~Additional Training

~~More comprehensive training on the policy governing implementation of the Act is available in the Judiciary Basic Procurement Seminar.~~

§ 150.30 Conflicts of Interest

[. . .]

§ 150.30.20 Potential Conflicts of Interest [table]

Type of conflict	Definition
(a) Unequal Access to Information	Access to internal judiciary business information as part of the performance of a contract that could provide the contractor a competitive advantage in a later competition for another judiciary contract. Such an advantage could easily be perceived as unfair by a competing vendor <u>offeror</u> who is not given similar access to the relevant information.
[. . .]	

REDLINE COMPARISON REFLECTING CHANGES

§ 150.40 Standards of Conduct

[. . .]

§ 150.40.30 ~~Guide References~~ Codes of Conduct

[. . .]

- (b) ~~Employees of the Administrative Office~~ AO personnel should also refer to the AO Manual, Vol 2, § 110.60 ~~(Code of Conduct)~~.

§ 150.50 Gratuities or Gifts

See: Guide, Vol 2C, Ch 6 (Gifts). AO personnel should also refer to the AO Manual, Vol 2, § 110.60 ~~(Gifts)~~ Code of Conduct.

§ 160 Ratification

~~§ 160.10 Definition~~ 05 Definitions [table]

~~A~~ Ratification is the

The act of approving an unauthorized commitment by an official who has the ~~delegated procurement~~ authority to do so. The approval of an unauthorized commitment or act results in the act being given effect as if originally authorized. It is not a desirable method of procurement, because it is not in accordance with the judiciary's policies and procedures, and may result in punitive action against the person(s) who committed the unauthorized act. ~~The CO is the~~ only judiciary employee who is ~~employees who may bind the judiciary are contracting officers,~~ including purchase cardholders, acting within the limits of their delegated authority.

Unauthorized Commitment

An agreement that is not binding, solely because the judiciary representative who made it lacked the procurement authority to enter into that agreement on behalf of the judiciary. **Note:** Employee reimbursements made under the authority of Guide, Vol 13, § 420.15(d) (Obligation for Goods or Services) are not considered unauthorized commitments and are not subject to the ratification procedures described below.

§ 160.10 Overview

(a) Contractors who act on unauthorized commitments do so at their own risk. They are not entitled to consideration (payment) unless and until the unauthorized commitment is ratified by an official with the appropriate delegated procurement authority to legally commit the judiciary to a contractual relationship. An. Payment can be substantially delayed or may not be forthcoming at all, since not all unauthorized commitment is an agreement that is not binding on the judiciary solely because the employee who made it lacked the appropriate procurement authority. commitments can be ratified, e.g., unauthorized commitments which violate appropriations law in some way cannot be ratified.

(b) Examples of unauthorized commitments include:

- Supplies or services are ordered by someone who is not either a COCP Contracting Officer (including purchase card holders) or identified by name as an authorized ordering official in a contract or blanket purchase agreement.
- Contractor starts work before the contractual document is issued or awarded by a CO.

REDLINE COMPARISON REFLECTING CHANGES

§ 160.10 [cont'd]

- An invoice is received from a contractor, but no purchase order or contract exists for the items or work described in the invoice.
- Purchase cardholder exceeds single purchase limitation without proper authorization/delegation of authority.

§ 160.15 Authority to Ratify

An unauthorized commitment may be ratified by the CO only after the appropriate judiciary official (i.e., ~~chief judge, FPD, FJC Director, PE or AO Director~~AO Director, PE, chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or PLO if delegated) has authorized the ratification. ~~If specifically delegated by the chief judge or federal public defender,~~ The PLO may not be the authorizing official for any ratification actions within the delegation limitation of the court unit or federal public defender organization (FPDO), so long as the PLO is not also the contracting officer (CO) on the same action where the PLO is also the CO on the action.

§ 160.25 Criteria for Approving Ratification Requests

An unauthorized commitment may be ratified if **all** of the following criteria are met:

[. . .]

- (b) The CO had the appropriate delegated procurement authority to enter into a contractual commitment at the time the unauthorized commitment was made and still has the authority to do so. Or, for unauthorized actions exceeding the CO's delegated procurement authority, the PE could have granted authority to enter into such a contractual commitment. The ~~court unit, federal public defender organization (FPDO), or FJC~~PLO must contact PMD for assistance in making this determination;

[. . .]

§ 160.30 Who May Authorize Ratification [table]

IF the action...	THEN...
(a) falls within the general delegation authority of the court unit, FPDO, or FJC defined <u>is within the authority delegated at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)</u>	the authorizing official is the chief judge, FPD, the FJC Director or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) , or the PLO (if delegated), who will provide a one time delegation to the CO to ratify the unauthorized action or assign it to a CO with the appropriate authority.
(b) does <u>is</u> not fall within the delegation authority of the court unit, FPDO, or FJC defined <u>delegated</u> at <u>§ 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials)</u>	the authorizing official is the PE. The CO will submit to the PE the ratification documentation, including a signed approval of the request by the PLO, chief judge, FPD, or the FJC Director <u>chief judge or other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials), or the PLO (if delegated)</u> . The PE will review the documents and, if appropriate, provide a one time delegation of authority for the CO to ratify the action.

REDLINE COMPARISON REFLECTING CHANGES

§ 160.35 Ratification Actions by CO

If the ratification is ultimately approved in writing, the CO must:

[. . .]

(c) ~~note~~ include the following statement on each such contract document:

~~_____~~ "This [~~fill in purchase order, delivery order, task order, contract, or modification~~] contract action ratifies an unauthorized commitment made on [date]."; and

[. . .]

§ 160.45 Reporting Requirement

The chief judge, ~~FJC Director, or FPD~~ and other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) must submit a report to the PE each month listing each request received for ratification of an unauthorized commitment with the final disposition of each request. Reporting is not required ~~during months with~~ if there have been no ratification requests during a month. The report must include the following information:

(a) name of ~~court~~ judiciary unit, ~~FPD or FJC~~;

[. . .]

§ 160.50 Employee Consequences

A decision to ratify a specific unauthorized commitment does not preclude disciplinary action against the employee responsible for it, especially if the violation is flagrant or if the employee has one or more prior unauthorized commitments. Employees may be disciplined for making unauthorized commitments, regardless of whether or not the unauthorized commitment is ratified. See: Guide, Vol 12, Ch 3 (Employee Relations).

[Significant changes in Appendix 1D (Contracting Officers' Certification Program (Level 1 Purchase Card Program)) follow:]

Appx 1D: Contracting Officers' Certification Program – Level 1 Purchase Card Program

[. . .]

Training Required for Level 1 Certification – Judiciary Purchase Card Program Training (desktop training – Course 2) online training – Blackboard CourtsLearn Course 2). Training must be reviewed every two years.

[Significant changes in Appendix 1F (Contracting Officers Certification Program (Level 3)) follow:]

Appx 1F: Contracting Officers' Certification Program – Level 3

[. . .]

Training Required for Level 3 Certification – Judiciary Procurement Workshop (classroom training), plus Judiciary Basic Procurement Seminar (blended training – desktop and classroom) plus Federal Appropriations Law, (desktop training) – Biennial for the U.S. Courts (both available online). Level 3 COs must also complete a minimum of 16 hours of continuing education = 16 hours every two years.

REDLINE COMPARISON REFLECTING CHANGES

Contracting Officers' Certification Program – Level 3 [table]

Types of Actions	Conditions
Interagency Agreements (IAs) and Memoranda of Understanding (MOUs) for Procurements	Interagency agreements and memoranda of understanding for procurements when the judiciary is the receiving agency: delegated up to \$100,000 when approved by <u>the</u> chief judge; FPD or the FJC Director (other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated) prior to signing. – When the judiciary is the providing agency, this is not delegated and the request <u>is must be</u> submitted to the PE for processing.
Procurement Method	Conditions
Other Than Full And Open Competition Procurements	Up to \$25,000: IT products or services Unlimited: <ol style="list-style-type: none"> (1) Transit Passes/Vouchers (2) Purchase of non-commercial products or services only available from state/local government entities <u>AO 370</u> in support of above must be approved by <u>the</u> chief judge or FPD other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Certain Judiciary Officials) (or PLO, if delegated). All other purchases exceeding the applicable competition threshold: not delegated.

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

§ 210 Policy

§ 210.10 In General

Procurement planning is the process by which the efforts of all personnel responsible for significant aspects of a procurement are coordinated and integrated comprehensively. The formality and detail of the planning and preparation process will vary with the size, complexity, mission-criticality, and projected dollar value of the requirement. Procurement planning must include the related budget planning. Major purchases must be planned and budgeted consistently with the court's budget process, governance mechanisms and management reporting processes. A summary of planned major procurements is included as part of management reports to the chief judge or ~~federal public defender~~ ~~other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials)~~ per the Management Oversight and Stewardship Handbook. It includes one-year, two-year, and five-year planning lead times.

REDLINE COMPARISON REFLECTING CHANGES

§ 220 Terms and Conditions

[. . .]

§ 220.50 Funding Contract Awards

[. . .]

§ 220.50.60 Contracts Crossing Fiscal Years (Annual Appropriations)

[. . .]

- (b) The Director is statutorily authorized to enter into a contract, exercise an option, or place an order under a contract for severable services (e.g., equipment maintenance services, court reporting services, interpreter services, etc.) for a period that begins in one fiscal year and ends in the next fiscal year using annual appropriations if the period of the contract awarded, option exercised, or order placed does not exceed one year (28 U.S.C. § 604(g)(4)(A)). Current year funds, available as of the date such an award is made, may be obligated for the total amount of the contract, option, or order entered into under this authority.

§ 220.55 Contract Financing

[. . .]

§ 220.55.30 Delegation

- (a) Subject to the following limitations, the Director has delegated to chief judges, ~~FPDs~~, and ~~the FJC Director~~ other judiciary officials identified at § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials), the authority to use commercial advance payment, subject to the limitations of the bona fide needs rule, in the purchase of services which meet the following conditions:

[. . .]

§ 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 other judiciary official identified at § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials) (or Procurement Liaison Officer, if delegated), or PE determines:

[Significant changes in Chapter 5 (Special Categories of Procurements) follow:]

§ 510 Personal Services Contracts

[. . .]

§ 510.20 General Prohibition

[. . .]

§ 510.30 Judiciary's Statutory ~~Exceptions to Prohibition~~ Authority

- (a) The judiciary's only statutory authority to contract for personal services is ~~Under~~ 28 U.S.C. § 612(a), which authorizes the Director of the Administrative Office (AO) ~~has statutory authority~~ to contract for personal services for the effective management, coordination, operation, and use of information technology equipment, purchased by the Judiciary Information Technology (JIT) fund. ~~There are no other statutory authority exceptions for personal services contracts applicable~~ Contracts issued under this authority are subject to the judiciary competition requirements, although they are exempt from the advertising requirement of 41 U.S.C. § 6101. See: Guide, Vol 14, 130.20.15 (Advertising Requirements).

[. . .]

REDLINE COMPARISON REFLECTING CHANGES

§ 520 Expert and Consultant Nonpersonal Services Contracts

[. . .]

§ 520.20 Competition and Advertising Exceptions

- (a) These services are not required to be competed or advertised. When contracting for the services of a consultant or expert under [5 U.S.C. § 3109](#), the CO is not required to prepare a sole source justification, since there is no competition requirement. However, the file documentation must reflect that these services are acquired under the authority of [5 U.S.C. § 3109](#) so that anyone reviewing the contract file will understand why the requirement was not competed or advertised.
- (b) Expert or consultant contracts may not be used as a “pass through” for services of individuals other than the named expert, or to acquire goods or services which would otherwise be subject to the judiciary’s competition requirements.

§ 520.35 ~~Reserved~~ Limitations

~~Contracting for the services of consultants or experts under 5 U.S.C. § 3109 is only appropriate when:~~

~~———— (a) ——— the work is temporary or intermittent, as defined below:~~

~~———— (1) ——— Temporary~~

~~———— Continuous performance over a period not exceeding one year. Because of the period limitation, it is not appropriate to include options to extend the period of performance beyond one year in contracts for temporary expert or consultant services.~~

~~———— (2) ——— Intermittent~~

~~Text Was Moved From Here: 1~~

~~———— Occasional or irregular work on cases, programs, projects, and problems requiring intermittent services as distinguished from continuous. An intermittent service contract cannot exceed 130 days of work in a service year, but may be renewed from year to year;~~

~~End Of Moved Text~~

~~———— (b) ——— the position does not involve policy, management, or operating duties of judiciary employees; and~~

~~———— (c) ——— the individual or business entity possesses the necessary skills and expertise to qualify as an expert or consultant (see: [§ 520.15 \(Definitions\)](#));~~

§ 520.45 Restrictions

(a) The services of consultants or experts under 5 U.S.C. § 3109 may be obtained by contract only if:

(1) the work is temporary or intermittent, defined as follows:

REDLINE COMPARISON REFLECTING CHANGES

§ 520.45 [cont'd]

(A) Temporary

Continuous performance (i.e., full time) over a period not exceeding one year. Because of the period limitation, it is not appropriate to include options to extend the period of performance beyond one year in contracts for temporary expert or consultant services. This authority may not be used to procure the services of experts or consultants under a succession of short-term contracts where the resulting continuous performance would exceed one year.

Text Moved Here: 1

(B) Intermittent

Occasional or irregular work on cases, programs, projects, and problems requiring intermittent services as distinguished from continuous. ~~An~~A contract for intermittent ~~service contracts~~services cannot exceed 130 days of work in a service year, but may be renewed from year to year~~;~~.

End Of Moved Text

(2) the position does not involve policy, management of judiciary staff or projects, or the operating duties of judiciary employees; and

(3) the individual or business entity possesses the necessary skills and expertise to qualify as an expert or consultant (see: § 520.15 (Definitions)).

(b) A CO cannot contract for expert or consulting services for any of the following purposes:

~~(1) to perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of judiciary officials;~~

~~(2) to bypass, circumvent, or undermine personnel ceilings, pay limitations, or competitive employment procedures;~~

~~(3) to perform duties that otherwise would be duties required of a judiciary employee; or~~

~~(4) to perform a job that can be done by judiciary employees.~~

(bc) The CO must ensure that a~~A~~ contract for expert or consulting services does~~not~~ establish by its terms or allow by the manner in which it is administered:

(1) an employer-employee relationship between the judiciary and the contractor, including detailed control or supervision by judiciary personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services; or

(2) supervision of judiciary employees, or of employees of other contractors, by the contractor.

~~(c) Services of experts or consultants may not be procured under a succession of short-term contracts for full or part-time services where the resulting continuous performance would exceed one year.~~

REDLINE COMPARISON REFLECTING CHANGES

§ 520.85 Experts or Consultants Supporting Judicial Conference Committees

The use of reporters or consultants to directly support committees of the Judicial Conference of the United States (JCUS) requires prior approval.

Note: In this context, a "reporter" is a consultant who provides expert or specialized research, analytical and drafting support directly for a JCUS committee.

- (a) Any contract for expert or consulting services for a JCUS committee for a discrete, short-term project or activity must have prior approval from the AO Director and be issued by the Procurement Management Division. The COR appointed to oversee the work must be a member of the AO staff.
- (b) Any contract with a reporter or other consultant who may be expected to support a JCUS committee for a longer term or indefinitely must be approved through the AO Director by the Chief Justice, who makes all appointments to these positions.

§ 530 Architect-Engineer Contracts

§ 530.10 Architect-Engineer Services

§ 530.10.30 Source Selection

Sources for~~The award of~~ contracts for architect-engineer services ~~must be selected according to the~~is ~~subject to the requirements of the Brooks Act. See: § 130.20.50 (Procurement of Certain Professional Services). The~~ procedures in this chapter must be followed when contracting for these services rather than ~~the~~ solicitation or source selection procedures prescribed elsewhere in this volume. The selection authority for architect-engineer services must be designated by the PE, and may also be, but is not required to be, the CO.

§ 530.10.40 Publicizing and Response

[. . .]

- (b) The architect-engineer evaluation board and ~~CO (or other designated selection authority)~~ must evaluate each potential contractor based on the following criteria:

[. . .]

§ 530.30 Architect-Engineer Evaluation Board Functions

The evaluation board must perform the following functions under the ~~PE's~~ general direction, ~~of the PE (or, delegatee~~ if a one-time delegation ~~is granted to court organizations outside PMD to procure this type of service, under the general direction of the Chief Judge, FPD, FJC Director, or PLO~~has been made):

[. . .]

- (d) prepare for the ~~CO (or other designated selection authority)~~ a ~~selection~~ report recommending, in order of preference, at least three firms that are evaluated to be the most highly qualified to perform the required services. The selection report must include a description of the discussions and evaluation conducted by the board. This report will allow the ~~CO (or other designated selection authority)~~ to review the considerations upon which the recommendations are based.

REDLINE COMPARISON REFLECTING CHANGES

§ 530.40 Architect-Engineer Selection

§ 530.40.10 In General

The ~~GO (or other designated~~ selection authority) must:
[. . .]

§ 530.40.40 Revisions to the Report

The ~~GO (or other designated~~ selection authority) cannot add firms to the selection report. If the firms recommended in the report are not deemed to be qualified, or the report is considered inadequate for any reason, the ~~GO (or other designated~~ selection authority) must record the reasons and return the report to the evaluation board for appropriate revision.

§ 550 Interagency Agreements and ~~Memoranda of Understanding~~MOUs for Obtaining Products and Services

§ 550.10 In General

Under some circumstances, judiciary units may wish to acquire goods or services from or through other federal entities. The Director has authority to enter into interagency agreements (IAs) and memoranda of understanding (MOUs) for this purpose and has delegated this authority ~~to all chief judges, FPDs, and the FJC Director as part of the COGP Level 3 general delegations~~ as described at Guide, Vol 14, § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials). **See:** 28 U.S.C. § 604(a)(10)(c) and 31 U.S.C. § 1535 ; Guide, Vol 14, § 140.30.30(h) (Level 3 Delegation) and Guide, Vol 1, § 630(c) (Procurement). This section prescribes procedures applicable to these IAs and MOUs for obtaining products and services from other federal agencies.

Note: This section does **not** apply to:

- ~~the purchase of duplication/printing services (see: Guide, Vol 23, Ch 2 (Printing))~~ or to
- ~~the placement and administration of Reimbursable Work Authorizations (RWAs) (see: Guide, Vol 16 (Space and Facilities))~~ or
- MOUs with state or local agencies.

§ 550.30 Limitations

§ 550.30.10 Restrictions/Requirements

Interagency Agreements ~~and/or~~ Memoranda of Understanding:

- ~~(a)~~ ~~Can be made only~~ with another federal agencies:agency (~~see also: Economy Act Transactions in § 550.40 (Requirements for IAs and MOUs)~~);
- ~~(b)(a)~~ Must comply with the bona fide needs rule;
- ~~(b)~~ May not be used to circumvent conditions or limitations on the use of appropriated funds; and
- ~~(c)~~ May not be used to make prohibited purchases, whether prohibited by the judiciary or by the other agency.

REDLINE COMPARISON REFLECTING CHANGES

§ 550.30.30 Approval Requirements

- (a) IAs or MOUs issued by the AO are subject to PMD's internal approval procedures. The use of IAs or MOUs by other judiciary organizations to obtain products or services from another federal agency is subject to approval by the chief judge, ~~FPD, FJC Director~~ or other judiciary official identified at Guide, Vol 14, § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials), or the PLO, if delegated, subject to the following limitations:

[. . .]

- (2) The IA or MOU is signed by the chief judge, ~~FPD, FJC Director~~ or other judiciary official identified at Guide, Vol 14, § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials) or (if delegated) a CO, certified at the appropriate COCP level.

[. . .]

§ 550.30.40 ~~Authority Not Delegated~~

~~Authority is not delegated:~~

- ~~(1) for the detail of personnel to the judiciary from another federal agency, whether paid or unpaid; or~~
- ~~(2) for any IA or MOU exceeding the general delegation authority amount (see: Guide, Vol 14, § 140.30.30(h) (Level 3 Delegation)).~~

§ 550.40 Requirements for IAs and MOUs

[. . .]

§ 550.40.40 Economy Act Determination and Finding

[. . .]

- (c) For IAs and MOUs within the court unit's delegated procurement authority (see: [Guide, Vol 14, § 140.30.30\(h\) \(Level 3 Delegation\)](#)), the D&F must be approved by the chief judge, ~~FPD, or FJC Director~~ or other judiciary official identified at Guide, Vol 14, § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials) (or PLO, if delegated).

[. . .]

§ 550.40.60 Transfer of Funds

Other federal agencies may require that payment be made by transferring funds via the Department of Treasury's Intra-Governmental Payment and Collection (IPAC) system. If the providing agency requires that payment be made via the IPAC system, the purchasing CO will provide the agency location code in [Form AO 368 \(Interagency Agreement\)](#) or provide it in the other federal agency's form. These set forth the accounting information for both the providing and purchasing agencies ~~besides~~ in addition to other relevant details of the agreement. Because IPAC transfers can only be accomplished at the AO, the CO ~~will~~ may need to seek assistance, ~~if necessary,~~ from the AO Accounting ~~and Financial Systems Division (AFSD) and ensure that the form is properly completed, executed, and a copy forwarded to AFSD Division and follow their instructions to accomplish the payment.~~ The chief judge, ~~FPD, or FJC Director~~ or other judiciary official identified at Guide, Vol 14, § 120.20.10(b) (Delegation to Chief Judges and Other Judiciary Officials) (or PLO, if delegated) must sign the form as the Authorizing Official, indicating concurrence. These discussions should be carried out and all the funding issues resolved before requesting ~~chief judge, FPD, FJC Director, or PLO~~ approval of the IA or MOU.