

CONTRACT COURT REPORTING

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PART 11.1 Introduction.

1. Contractual reporting services, including shorthand, stenograph and stenomask, in district and bankruptcy courts may be used to meet the reporting requirements of each court's judicial officers. In the past, the use of contract reporters has been restricted by Judicial Conference policy. However, with budget decentralization and allotment simplification, each district court receives contract court reporter funding in the aggregate allotment based on a formula, to support reporting requirements not otherwise met by court reporter staffing allocations. Courts have flexibility to use all funds allotted for reporting resources for full or part-time staff reporters, contract court reporters or electronic court recorder operator positions. Bankruptcy courts are allocated funding for contract court reporters and staffing credit for electronic court recorder operators. Each year, the allocation of reporting resources to district and bankruptcy courts will be redetermined.

Competitive bidding for contract reporting services is required if the amount involved is \$25,000 or more to assure that each firm has an opportunity to offer its services to the government and that the government will pay only the fair market rate for those services it buys. For services that total less than \$25,000, formal advertising is not required and courts may use the simplified acquisition procedures contained in Federal Acquisition Regulation Part 13. However, in order to achieve the best value for the government and to lessen the chance of protests from offerors who may not have been given a fair chance to bid, less formal advertising is strongly encouraged (postings of bid notices, use of telephone directories as bidders lists, etc.) A detailed instruction package for obtaining court reporting services using these procedures may be obtained from the Contracts Division of the Administrative Office.

More than one contract may be authorized for a court if no one contractor can fulfill the court's needs in all locations, or even totally in one location. In the case of more than one contractor with different session attendance fees, however, the less expensive should be given preference in scheduling.

No contractor is guaranteed any minimum amount of work by virtue of holding a contract. A contractor serves only on an "as needed" basis. Generally, contracts in district courts should not specify that the work is to be performed exclusively for any one category of judicial officers, such as senior judges or magistrate judges. Contractors are required to attend the general needs of the court.

Contract reporting services must abide by the requirements of 28 U.S.C. § 753 and requirements of the Judicial Conference. The court reporting supervisor is responsible for ascertaining that the contractor certifies the original notes and files them with the clerk of court, fulfills the Judicial Conference requirements for transcript format, properly bills the parties for transcripts, and produces transcripts within the time guidelines of the Judicial Conference.

Contractual services paid for by the courts may not be used to assist the court's official reporters in the production of expedited, daily, or hourly transcript, nor to replace the court's reporters to allow them to engage in transcript production or in private reporting work. Contractual attendance fees cannot be levied against parties.

Section 753(g) of title 28, United States Code, provides that circuit councils are to provide the Director of the Administrative Office with a determination that, in a given district, court reporters should be provided on a contractual basis. The law (28 U.S.C. § 332(d)(1) and (2)) provides the councils with the discretion to take a more active role in supervising the courts' administration of contractual court reporting programs if they wish. (General Counsel opinion, October 16, 1989.) The need for contractual services should be delineated in the courts' reporting services management plans.

PART 11.2 Statutory Authority.

"(g) If, upon the advice of the chief judge of any district court within the circuit, the judicial council of any circuit determines that the number of court reporters provided such district court pursuant to subsection (a) of this section is insufficient to meet temporary demands and needs and that the services of additional court reporters for such district court should be provided the judges of such district court (including the senior judges thereof when such senior judges are performing substantial judicial services for such court) on a contract basis, rather than by appointment of court reporters as otherwise provided in this section, and such judicial council notifies the Director of the Administrative Office, in writing, of such determination, the Director of the Administrative Office is authorized to and shall contract, without regard to Section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. § 5), with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds, after consultation with the chief judge of the district court, will best serve the needs of such district court." (28 U.S.C. § 753(g))

PART 11.3 Judicial Conference Policy.

11.3.1 District Court.

"The Conference, at the request of the Committee, thereupon restated its policy on the utilization of full-time court reporters as follows: (1) that prior to employing contract court reporters a court should make every effort to fully utilize its permanent reporting staff and (2) that the use of pooling systems for court reporters in multi-judge courts is encouraged (Conf. Rept., Mar. 1980, p. 20." (Report of the Proceedings of the Judicial Conference of the United States, March 1981, page 24.)

“...through scheduling, the use of temporary or contractual services is to be minimized to every extent practicable.” (Report of the Proceedings of the Judicial Conference of the United States, March 1982, page 8.)

“That reporting services for senior judges are to be provided through a combination of official employees and contract reporting services. This policy will become effective one year after the date of its adoption.” (That is, effective March 12, 1983.) (Report of the Proceedings of the Judicial Conference of the United States, March 1982, page 11.)

“A court is allowed to hire a contract court reporter [to assist an official reporter] when all the following conditions exist:

1. The official court reporter has requested relief because a judge has scheduled more than one trial per day, and the reporter is reporting for at least five hours on each such day;
2. The chief judge of the district certifies that a judge has scheduled more than one trial per day requiring reporting services for five or more hours per day and the court's other official court reporters are unable to cover the proceedings because they are scheduled to report other proceedings or are on leave;
3. The purpose for considering and approving the relief is not to allow the official court reporter to work on transcript production; and
4. An official court reporter not under a tour of duty who is provided relief is prohibited from engaging in private reporting work on those days relief is provided. (Report of the Proceedings of the Judicial Conference of the United States, March 1992, page 27.)

11.3.2 Bankruptcy Court.

"The Conference, upon recommendation of the Committee, approved a general policy that ... when the volume of business does not warrant the services of a full-time court reporter, contract reporters be used. The Conference directed the Administrative Office not to authorize full-time court reporters until the need for their services is fully justified, and further that, until such need is established, contract reporters be authorized." (Report of the Proceedings of the Judicial Conference of the United States, March 1979, pages 33 and 34.)

PART 11.4 Prohibition Against Contracting with Officers or Employees.

11.4.1 Statutory Authority.

11.4.1.a Title 18 U.S.C. § 203:

Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly --

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise,

rendered or to be rendered either personally or by another--

(A) at a time when such person is a Member of Congress, Member of Congress elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee of the United States in the executive, legislative, or judicial branch of Government, or in any agency of the United States, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commission, officer, or employee; shall be subject to the penalties set forth in section 216 of this title. Under section 216, the punishment for an offense under section 203 of this title may include imprisonment for up to five years, a civil penalty of not more than \$50,000 for each violation, or both.

11.4.1.b Federal Acquisition Regulation:

1. **3.601 Policy.**

(a) Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

(b) For purposes of this subpart, special Government employees (as defined in 18 U.S. C. § 202) performing services as experts, advisors, or consultants, or as members of advisory committees, are not considered Government employees unless --

(1) The contract arises directly out of the individual's activity as a special Government employee;

(2) In the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract; or

(3) Another conflict of interest is determined to exist.

2. **3.602 Exceptions.**

The agency head, or a designee not below the level of the head of the contracting

activity, may authorize an exception to the policy in 3.601 only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

3. 3.603 Responsibilities of the contracting officer.

(a) Before awarding a contract, the contracting officer shall obtain an authorization under 3.602 if --

(1) The contracting officer knows, or has reason to believe, that a prospective contractor is one to which award is otherwise prohibited under 3.601; and

(2) There is a most compelling reason to make an award to that prospective contractor.

(b) The contracting officer shall comply with the requirements and guidance in [FAR] Subpart 9.5 [Organizational and Consultant Conflicts of Interest] before awarding a contract to an organization owned or substantially owned or controlled by Government employees. (48 C.F.R. §§ 3.601 through 3.603)

11.4.1.c General Counsel Opinion.

"While we [the courts] are not per se bound by the Federal Procurement Regulations, this one states an ethical proposition reflected in a line of decisions by the Comptroller General holding `that contracts between the government and its employees are open to criticism on the grounds of possible favoritism or preferential treatment and should not be entered into except for the most cogent reasons.' 25 Comp. Gen. 690 (1946); 27 Comp. Gen. 735; B-124557, Oct. 10, 1955; B-128289, July 9, 1956; B-136095, May 23, 1958; B-144454, Dec. 21, 1960; B-148092, Feb. 28, 1962; B-159472, August 10, 1966; B-167036, Feb. 18, 1970; B-173179, August 25, 1971." (February 28, 1979)

PART 11.5 Obtaining Contract Court Reporting Services.

11.5.1 Authorization.

11.5.1.a District Court. In accordance with 28 U.S.C. § 753(g), if the judicial council of any circuit determines that the number of court reporters provided to a district court is insufficient to meet temporary demands and needs, the Director of the Administrative Office is authorized to contract for court reporting services upon notification by the judicial council. A request for contract services should be directed by the chief judge of the district court or his designee to the circuit council.

11.5.1.b Bankruptcy Court. The Judicial Conference has authorized the use of contract court reporters or the use of electronic sound recording equipment for all judicial proceedings in bankruptcy courts.

11.5.2 Contracts for \$25,000 or more.

Contracts in the amount of \$25,000 or more are approved for a 12-month period, with

two option periods of 12-months each, by the Administrative Office. Approximately 90 days before the contract is to expire, the Contracts and Services Division sends a letter to the clerk of the district court advising that solicitation procedures for a new contract should commence.

11.5.3 Contracts for less than \$25,000.

Courts requiring less than \$25,000 in contract court reporting services annually may follow the guidance regarding small purchase procedures found in the Federal Acquisition Regulation (FAR) Part 13. A detailed forms and instruction package to assist the courts in specifically tailoring Part 13 procedures to soliciting court reporting services is available from the Contracts Branch of the Administrative Office.

11.5.4 Court Reporting Supervisor.

The court reporting supervisor is responsible for determining the quality of service provided, as well as adherence to the terms of the contract, including: certification of notes, safekeeping of notes, tapes and logs, monitoring delivery timetables, transcript charges, compliance with format requirements, and accuracy of billings.

11.5.5 Procedures.

11.5.5.a Contracts for \$25,000 or More. It is the responsibility of the Chief Judge of the district court to appoint a Contracting Officer who is responsible for following the procedures provided by the Contracts Division of the Administrative Office. Once a contract has been awarded by the Administrative Office, it is recommended that a Contracting Officer's Technical Representative (COTR) be appointed by the Contracting Officer to administer the contract. Once appointed, the COTR will receive an instructive letter from the Contracts Division.

11.5.5.b Contracts for Less than \$25,000. It is the responsibility of the Chief Judge of the district to appoint a Procurement Liaison Officer (PLO) to be responsible for administering the simplified acquisition process. The PLO is responsible for soliciting offers utilizing the procedures set forth in Volume 1, Chapter 8 of the Guide, or as otherwise provided by the Contracts Division of the Administrative Office.

11.5.6 Administrative Office.

11.5.6.a Contracts Division. The chief of this division is the contracting officer who relies on designated court personnel for necessary information and essential support services in the process of soliciting prospective contractors, evaluating proposals, and making an award in contracts of \$25,000 or more. The Contracts Division provides guidance to the courts in soliciting for contract reporting services using the simplified acquisition process.

11.5.6.b District or Bankruptcy Court Administration Division. These divisions are responsible for providing court reporting program information and allocating court reporting resources to the courts. Staff work directly with the individual court

officials, as appropriate.

PART 11.6 Payment of Contract Court Reporting Services.

The clerk of the district court is, by virtue of his appointment, the financial officer of the court, and as such, is responsible and accountable for all fiscal operations of the court. By delegation of authority of the Director of the Administrative Office, as authorized by 28 U.S.C. § 602(d), clerks of district courts are designated as disbursing officers with authority to disburse appropriated monies. As authorized by 28 U.S.C. § 156(f), “For purposes of financial accountability in a district where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other monies collected by such clerk ...”.

Prior to disbursing funds, the clerk of court must ensure that all vouchers are properly approved and supported by appropriate general or specific authorizations. The clerk may designate assistant disbursing officers.

The disbursing officer makes payment to the contract court reporting firm for services rendered to the district court and to the bankruptcy court. The firm is to be paid at the contract rate for those days or half days during which services are provided to the district court or the bankruptcy court. The following procedures should be followed to obtain payment of attendance fees.

11.6.1 Form AO 336, Voucher for Attendance Fees for Contract Court Reporters. (See Exhibit 11.6-A.)

11.6.1.a Use. Form AO 336 is to be used for compensation and to report hours claimed by contract court reporting firms. It is designed to support payments made to contract court reporting services and to help collect data on the utilization of contract court reporting services.

11.6.1.b Completion. The contract court reporting service should follow the instructions on form AO 336 when completing this form. The clerk of court's office is available to assist the contract court reporting service in completing the form correctly. The computation of a court reporting service's compensation is to be in accordance with the contract.

11.6.1.c Signature. The court reporter/recorder must sign this form.

11.6.1.d Certification. A judge of the court, a magistrate judge, clerk of court, or the court reporting supervisor should sign as the approving official to certify that the reporter attended the court proceedings for which payment is claimed. This certification authorizes the disbursing officer to make payment.

11.6.1.e Submission to Clerk of Court. The form AO 336 should be submitted by the court reporting service to the clerk of court or a designated disbursing officer for direct payment of attendance fees under the terms of the contract. The certification on the form AO 336 must be made by persons knowledgeable of the terms of the contract for which payment will be made and the services actually provided and claimed by the contract court reporting service. The certifying or approving official should not be the same person performing the disbursing

function.

11.6.1.f Separate Voucher. Payment for contract court reporting services provided district judges, bankruptcy judges, magistrate judges, and land commissioners should be made on separate vouchers.

11.6.2 Payments by Clerk of Court.

The clerk of court or designated disbursing officer makes payments for contract court reporting services rendered during the year to the extent authorized by the circuit council and within the availability of funds authorized by the District or Bankruptcy Court Administration Divisions.

PART 11.7 Transcripts Ordered by the Court.

Funds appropriated for attendance and travel are not to be used to pay contractors for court-ordered transcripts. Funds have been appropriated specifically for this purpose.

General authorization for payment for transcripts ordered by district courts and bankruptcy courts has been given to each court. Administrative Office approval is not required regardless of the cost of the transcript order. All payments must be made in compliance with the transcript payment regulations outlined in Chapter 17, Transcripts and Chapter 20, Transcript Fees.