provide a suitable replacement in accordance with the requirements of this clause.

(f) Access to HUD information systems. If this contract requires contractor employees to have access to HUD information system(s), application(s), or information contained in such systems, the contractor shall comply with all requirements of HUDAR clause 2452.239-70, Access to HUD Systems, including providing for each affected employee any additional background investigation forms prescribed in that clause.

(g) Subcontracts. The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

[77 FR 73537, Dec. 10, 2012]

2452.237-77 Temporary closure of HUD facilities.

As prescribed in 2437.110(e)(4), insert the following clause:

TEMPORARY CLOSURE OF HUD FACILITIES

(DEC 2012)

OBSERVANCE OF LEGAL HOLIDAYS AND CLOSURE OF HUD FACILITIES (FEB 2006)

New Year’s Day
Martin Luther King’s Birthday
Washington’s Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day
Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(2) When any holiday specified in (a)(1) falls on a Saturday, the preceding Friday shall be observed. When any such holiday falls on a Sunday, the following Monday shall be observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor’s personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(b)(1) HUD may close a HUD facility for all or a portion of a business day as a result of—

(A) Granting administrative leave to non-essential HUD employees (e.g., unanticipated holiday);

(B) Inclement weather;

(C) Failure of Congress to appropriate operational funds;

(D) Or any other reason.

(2) In such cases, contractor personnel not classified as essential, i.e., not performing critical round-the-clock services or tasks, who are not already on duty at the facility shall not report to the facility. Such contractor personnel already present shall be dismissed and shall leave the facility.

(3) The contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled for performance during the period in which HUD employees are dismissed, and shall be guided by any specific instructions of the Contracting Officer or his/her duly authorized representative.

c) When contractor personnel services are not required or provided due to closure of a HUD facility as described in this clause, the contractor shall be compensated as follows—

(1) For fixed-price contracts, deductions in the contractor’s price will be computed as follows—

(A) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(B) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(2) For cost-reimbursement, time-and-materials and labor-hour type contracts, HUD shall not reimburse as direct costs, the costs of salaries or wages of contractor personnel for the period during which such personnel are dismissed from, or do not have access to, the facility.

(End of clause)


2452.239-70 Access to HUD systems.

As prescribed in 2439.107(a), insert the following clause:

ACCESS TO HUD SYSTEMS (DEC 2012)

(a) Definitions: As used in this clause—

Access means the ability to obtain, view, read, modify, delete, and/or otherwise make use of information resources.

Application means the use of information resources (information and information technology) to satisfy a specific set of user requirements (see OMB Circular A-130).
Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It does not include consultants engaged by any of those entities.

Mission-critical system means an information technology or telecommunications system used or operated by HUD or by a HUD contractor, or organization on behalf of HUD, that processes any information, the loss, misuse, disclosure, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

NACI means a National Agency Check with Inquiries, the minimum background investigation prescribed by OPM.

PIV Card means the Personal Identity Verification (PIV) Card, the Federal Government-issued identification credential (i.e., identification badge).

Sensitive information means any information of which the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest, the conduct of federal programs, or the privacy of which the loss, misuse, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

A system normally includes hardware, software, information, data, applications, communications, and people (see OMB Circular A-130). System includes any system used or operated on HUD’s behalf by another party.

(2) All contractor employees who require access to a HUD system or systems. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such system in performance of this contract. HUD may accept a PIV Card issued by another Federal Government agency but shall not be required to do so. No contractor employee will be permitted access to any HUD system without a PIV Card.

(3) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, “Questionnaire for Non-Sensitive Positions,” FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17).

(4) The Government Technical Representative (GTR) shall notify the contractor of those contractor employee positions requiring background investigations.

(a) General. (1) The performance of this contract requires contractor employees to have access to a HUD system or systems. All such employees who do not already possess a current PIV Card acceptable to HUD shall be required to provide personal background information, undergo a background investigation (NACI or other OPM-required or approved investigation), including an FBI National Criminal History Fingerprint Check, and obtain a PIV Card prior to being permitted access to any such system in performance of this contract. HUD may accept a PIV Card issued by another Federal Government agency but shall not be required to do so. No contractor employee will be permitted access to any HUD system without a PIV Card.

(2) All contractor employees who require access to mission-critical systems or sensitive information contained within a HUD system or application(s) are required to have a more extensive background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using, or operating the system or application(s).

(b) Citizenship-related requirements. Each affected contractor employee as described in paragraph (b) of this clause shall be:

(1) A United States (U.S.) citizen; or,
(2) A national of the United States (see 8 U.S.C. 1408); or,
(3) An alien lawfully admitted into, and lawfully permitted to be employed in the United States, provided that for any such individual, the Government is able to obtain sufficient background information to complete the investigation as required by this clause. Failure on the part of the contractor to provide sufficient information to perform a required investigation or the inability of the Government to verify information provided for affected contractor employees will result in denial of their access.

(c) Background investigation process.

(1) The Government Technical Representative (GTR) shall notify the contractor of those contractor employee positions requiring background investigations.

(2) The contractor shall deliver the forms and information required in paragraph (d)(1) of this clause to the GTR.

(3) The contractor shall submit the following information in lieu of the forms and information listed in paragraph (d)(1) of this clause: Employee’s full name, Social Security number, and place and date of birth.
(4) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the investigative forms described in paragraph (d)(1) of this clause.

(5) Upon completion of the investigation process, the GTR will notify the contractor if a contractor employee is determined to be unsuitable to have access to the system(s), application(s), or information. Such an employee may not be given access to those resources. If any such employee has already been given access pending the results of the background investigation, the contractor shall ensure that the employee’s access is revoked immediately upon receipt of the GTR’s notification.

(6) Failure of the GTR to notify the contractor (see subparagraph (d)(1)) of any employee who should be subject to the requirements of this clause and is known, or should reasonably be known, by the contractor to be subject to the requirements of this clause, shall not excuse the contractor from making such employee(s) known to the GTR. Any such employee who is identified and is working under the contract, without having had the appropriate background investigation or furnished the required forms for the investigation, shall cease to perform such work immediately and shall not be given access to the system(s)/application(s) described in paragraph (b) of this clause until the contractor has provided the investigative forms required in paragraph (d)(1) of this clause for the employee to the GTR.

(7) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD, or for whom a background investigation was completed, terminates employment with the contractor or otherwise is no longer performing work under this contract that requires access to the system(s), application(s), or information. The contractor shall provide a copy of the written notice to the Contracting Officer.

(e) PIV Cards. (1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD systems and does not already possess a PIV Card acceptable to HUD (see paragraph (b) of this clause). HUD will not issue the PIV Card until the contractor employee has successfully cleared an FBI National Criminal History Fingerprint Check, and HUD has initiated the background investigation for the contractor employee. Initiation is defined to mean that all background information required in paragraph (d)(1) of this clause has been delivered to HUD. The employee may not be given access prior to those two events. HUD may issue a PIV Card and grant access pending the completion of the background investigation. HUD will revoke the PIV Card and the employee’s access if the background investigation process (including adjudication of investigation results) for the employee has not been completed within 6 months after the issuance of the PIV Card.

(2) PIV Cards shall identify individuals as contractor employees. Contractor employees shall display their PIV Cards on their persons at all times while working in a HUD facility, and shall present cards for inspection upon request by HUD officials or HUD security personnel.

(3) The contractor shall be responsible for all PIV Cards issued to the contractor’s employees and shall immediately notify the GTR if any PIV Card(s) cannot be accounted for. The contractor shall promptly return PIV Cards to HUD as required by the FAR clause at 52.204-9. The contractor shall notify the GTR immediately whenever any contractor employee no longer has a need for his/her HUD-issued PIV Card (e.g., the employee terminates employment with the contractor, the employee’s duties no longer require access to HUD systems). The GTR will instruct the contractor as to how to return the PIV Card. Upon expiration of this contract, the GTR will instruct the contractor as to how to return all HUD-issued PIV Cards not previously returned. Unless otherwise directed by the Contracting Officer, the contractor shall not return PIV Cards to any person other than the GTR.

(f) Control of access. HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD systems. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD system. The contractor shall immediately notify such employee that he/she no longer has access to any HUD system, physically retrieve the employee’s PIV Card from the employee, and provide a suitable replacement employee in accordance with the requirements of this clause.

(g) Incident response notification. An incident is defined as an event, either accidental or deliberate, that results in unauthorized access, loss, disclosure, modification, or destruction of information technology systems, applications, or data. The contractor shall immediately notify the GTR and the Contracting Officer of any known or suspected incident, or any unauthorized disclosure of the information contained in the systems to which the contractor has access.

(h) Nondisclosure of information. (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized government personnel with an established need to know, or upon written approval of the Contracting Officer. Information contained in all source
documents and other media provided by HUD is the sole property of HUD.

(2) The contractor shall require that all employees who may have access to the system(s)/application(s) identified in paragraph (b) of this clause sign a pledge of nondisclosure of information. The employees shall sign these pledges before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of 3 years after final payment under this contract. The contractor shall provide a copy of these pledges to the GTR.

(i) Security procedures. (1) The Contractor shall comply with applicable federal and HUD statutes, regulations, policies, and procedures governing the security of the system(s) to which the contractor's employees have access including, but not limited to:

(i) The Federal Information Security Management Act (FISMA) of 2002;


(iii) HUD Handbook 2400.25, Information Technology Security Policy;

(iv) HUD Handbook 723.3, Personnel Security/Suitability;

(v) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2;

(vi) Homeland Security Presidential Directive 12 (HSPD–12); and

(vii) OMB Memorandum M–05–24, Implementing Guidance for HSPD–12.

The HUD Handbooks are available online at: http://www.hud.gov/offices/adm/hudclips/ or from the GTR.

(c) The Contracting Officer may assess failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default. (1) Physical access to Federal Government facilities. The contractor and any subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

(k) Contractor compliance with this clause. The contractor and any subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

(l) Subcontracts. The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (b) of this section are applicable to performance of the subcontract.

(End of clause)

2452.239–71 Information Technology Virus Security.

As prescribed in 2439.107(b), insert the following clause:

INFORMATION TECHNOLOGY VIRUS SECURITY

(FEB 2006)

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract:

[product description, part/catalog number, other identifier, and serial number, if any] "This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery."

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of