

2301.105-2

the decimal point are identical to and reflect the same divisions as in the FAR numbering scheme.

(c) *References and citations.* (1) Unless otherwise stated, references indicate parts, subparts, sections, subsections, etc., of this regulation, the SSAR.

(2) This regulation shall be referred to as the Social Security Acquisition Regulation (SSAR). Any reference may

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be cited as “SSAR” followed by the appropriate number. Within the SSAR, the number alone will be used.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by “FAR.”

PARTS 2302-2399 [RESERVED]

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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SUBCHAPTER A—GENERAL

PART 2400 [RESERVED]

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

Sec.

2401.000 Scope of part.

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nation of appointment.
2401.603-2 Selection.
2401.603-3 Appointment.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C.
3535(d).

SOURCE: 49 FR 7697, Mar. 1, 1984, unless oth-
erwise noted.

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation

(HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as chapter 24 of the Federal Acquisition Regulation System (48 CFR chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.103 Authority.

The HUDAR is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the general authorization in FAR 1.301, and the Secretary's delegations of procurement authority.

[71 FR 2434, Jan. 13, 2006]

2401.104 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDAR and the FAR.

[49 FR 7697, Mar. 1, 1984. Redesignated at 61 FR 19470, May 1, 1996]

2401.105

2401.105 Issuance.

2401.105-2 Arrangement of regulations.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at subpart 2401.4, Deviations. (The "24" in the number indicates what chapter of title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number will parallel the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, FAR 14.407, Award, does not contain a provision for the steps to be taken when only one bid is received. The HUDAR provides this information. Since the subject matter supplements what is contained in FAR 14.407, the HUDAR section supplementing the FAR is numbered 2414.407-70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with FEDERAL REGISTER standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.105-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2401.105-2(c)." Any section of the HUDAR may be formally identified by the section

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number, e.g., "HUDAR 2401.105-2." In the HUDAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 37.108.

[49 FR 7697, Mar. 1, 1984, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19470, May 1, 1996, as amended at 64 FR 46094, Aug. 23, 1999]

2401.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. HUD has received approval from OMB to collect information under the provisions of its Acquisition Regulation. The OMB Approval Number is 2535-0091.

[50 FR 46575, Nov. 8, 1985. Redesignated at 61 FR 19470, May 1, 1996]

2401.106-70 Contract clause.

The contracting officer shall insert the clause at 2452.201-70, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

[77 FR 73525, Dec. 10, 2012]

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

[77 FR 73525, Dec. 10, 2012]

2401.404 Class deviations.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

[77 FR 73525, Dec. 10, 2012]

2401.470 Deviations from the HUDAR.

The Senior Procurement Executive is authorized to approve deviations from the HUDAR.

[77 FR 73525, Dec. 10, 2012]

2401.471 Requests for deviations—FAR and HUDAR.

(a) Requests for deviations from the FAR or HUDAR shall be submitted in writing to the Chief Procurement Officer.

(b) Each request for authorization of a deviation from the FAR or HUDAR shall:

- (1) Identify the deviation as individual or class;
- (2) Identify the FAR or the HUDAR requirement from which a deviation is sought;
- (3) Fully describe the deviation, its intended effect, and the circumstances in which it will be used;
- (4) Explain why a deviation is required and include pertinent background and supporting information;
- (5) State whether the deviation has been requested previously and if so, the circumstances and result of the previous request; and
- (6) Identify the contractor(s) and the contract(s) (including dollar values) that would be affected.

(c) At his or her discretion, the Chief Procurement Officer will consider requests for deviations on an expedited basis and, in urgent situations, may authorize deviations via telephone or electronic mail. Such authorizations will be confirmed in writing.

(d) The contracting officer shall include a copy of each authorized deviation

in the contract file(s) to which it pertains.

[77 FR 73525, Dec. 10, 2012]

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

2401.601 General.

2401.601-70 Senior Procurement Executive.

Unless otherwise designated by the Secretary through a delegation of authority, the Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all departmental procurement policy, regulations, and procedures, and oversight of all HUD procurement operations. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement workforce, and certification to the Secretary that the Department's procurement system meets approved criteria.

[71 FR 2434, Jan. 13, 2006]

2401.602 Contracting Officers.

2401.602-3 Ratification of unauthorized commitments.

(b)(1) Requests for ratification of unauthorized commitments shall be submitted in writing through the contracting officer to the ratification approval officials identified in paragraph (b)(3) of this section. The Assistant Secretary or equivalent official for the office that created the unauthorized commitment shall sign the request for ratification.

(3) In accordance with FAR 1.602-3(b)(3), the Senior Procurement Executive may delegate the authority to approve ratifications of individual unauthorized commitments down to, but not below, the level of an Assistant Chief Procurement Officer.

(c)(5) Concurrence by legal counsel in the Contracting Officer's recommendation for payment of an unauthorized commitment (see FAR 1.602-3(c)(5)) shall not be required when the value of

2401.603

the payment is equal to, or less than, the simplified acquisition threshold.

[71 FR 2434, Jan. 13, 2006, as amended at 77 FR 73525, Dec. 10, 2012]

2401.603 Selection, appointment and termination of appointment.

2401.603-2 Selection.

(a) In selecting Contracting Officers, appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation, and ethics of the individual to be appointed. Appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute or administer, and any other limitations on the scope of the authority to be exercised.

(b) Individuals appointed to a position having Contracting Officer authority, and whose primary duties are performed as a Contracting Officer, other than contracting authority limited to simplified acquisition procedures, shall meet the following requirements:

(1) The education and specialized experience commensurate with the grade of the appointee as set forth in the qualification standards for the GS-1102 occupational series developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433, and two years of experience performing contracting, procurement, or purchasing operations in a government or commercial procurement office. Alternately, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for appointment.

(2) Successful completion of contracting-related training as prescribed by the Senior Procurement Executive.

(c) The Senior Procurement Executive may waive education and specialized experience requirements as provided for in the qualification standards developed by the Office of Federal Procurement Policy under the authority of 41 U.S.C. 433.

[71 FR 2434, Jan. 13, 2006]

2401.603-3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental dele-

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gation of authority shall be made in writing by the Head of the Contracting Activity. The Certificate of Appointment (SF 1402) shall constitute the appointing official's determination that the appointee meets the selection requirements set forth at 2401.603-2.

[64 FR 46094, Aug. 23, 1999]

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.

2402.000 Scope of part.

Subpart 2402.1—Definitions

2402.101 Definitions.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

[49 FR 7699, Mar. 1, 1984]

Subpart 2402.1—Definitions

2402.101 Definitions.

Accounting Office means the Office of Accounting Operations within the Office of the Chief Financial Officer and includes that Office's field components.

Chief Procurement Officer means the HUD official having authority for all of the Department's procurement activities.

Contracting activity means the Office of the Chief Procurement

Department means the Department of Housing and Urban Development, which may also be designated as HUD.

Government Technical Monitor (GTM) means the individual responsible for assisting a Government Technical Representative in the latter's performance of his/her duties.

Government Technical Representative (GTR) means the individual serving as the Contracting Officer's representative responsible for monitoring the technical aspects of a contract, including guidance, oversight, and evaluation

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of the Contractor's performance and deliverables.

Head of the contracting activity (HCA) means the Chief Procurement Officer. As permitted by the FAR and the HUD Acquisition Regulation, the Chief Procurement Officer, acting within his or her authority as the Senior Procurement Executive, may delegate HCA authority for specific actions or classes of actions down to, but not below, the level of the Assistant Chief Procurement Officers. Delegated HCA authority may not be further redelegated.

Legal counsel means HUD's Office of General Counsel and its field-based components.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include the Assistant Secretaries and equivalent Departmental management (e.g., President, GNMA, Inspector General, General Counsel, Chief Procurement Officer, etc.).

Secretary means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive means the Chief Procurement Officer.

[64 FR 46094, Aug. 23, 1999, as amended at 71 FR 2435, Jan. 13, 2006; 77 FR 73525, Dec. 10, 2012]

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2403.1—Safeguards

Sec.

2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

2403.204 Treatment of violations.

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502-70 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.602 Policy.

2403.670 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 7700, Mar. 1, 1984, unless otherwise noted.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 5 CFR part 2635 and 5 CFR part 7501.

[64 FR 46095, Aug. 23, 1999]

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203-3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Senior Procurement Executive for disposition.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.204 Treatment of violations.

The Senior Procurement Executive will process violations in accordance with FAR 3.204.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.303-70

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Potential anti-competitive practices such as described in FAR subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.4—Contingent Fees

2403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the HCA shall review the facts and, if appropriate, take or direct one or more of the actions set forth at FAR 3.405(b). The HCA shall refer suspected fraudulent or criminal matters to HUD's Office of the Inspector General for possible referral to the Department of Justice.

[49 FR 7700, Mar. 1, 1984. Redesignated at 64 FR 46095, Aug. 23, 1999; 77 FR 73526, Dec. 10, 2012]

Subpart 2403.5—Other Improper Business Practices

2403.502-70 Subcontractor kickbacks.

Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of the Inspector General consistent with the procedures for reporting any violation of law contained in the current HUD

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Handbook 2000.3, Office of Inspector General Activities.

[64 FR 46095, Aug. 23, 1999]

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.602 Policy.

The Senior Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR subpart 3.6. In addition, the Contracting Officer shall comply with FAR subpart 9.5 before awarding any such contract.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986. Redesignated at 64 FR 46095, Aug. 23, 1999]

2403.670 Solicitation provision and contract clause.

Insert the clause at 48 CFR 2452.203-70 in all solicitations and contracts.

[65 FR 3576, Jan. 21, 2000]

PART 2404—ADMINISTRATIVE MATTERS

Subpart 2404.7—Contractor Records Retention

Sec.
2404.7001 Contract clause.

Subpart 2404.8—Government Contract Files

2404.805 Storage, handling and disposal of contract files.

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2404.7—Contractor Records Retention

2404.7001 Contract clause.

The Contracting Officer shall insert the clause at 2452.204-70, "Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats)," in all solicitations and contracts exceeding the simplified acquisition threshold. The Contracting Officer shall use the basic clause with its Alternate I in cost-reimbursement type contracts. The Contracting Officer shall use the basic

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2404.805

clause with its Alternate II in labor-hour and time-and-materials contracts.

[81 FR 13750, Mar. 15, 2016]

Subpart 2404.8—Government Contract Files

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal

Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

[49 FR 7700, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984. Redesignated and amended at 60 FR 46155, Sept. 5, 1995]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

Subpart 2405.2—Synopsis of Proposed Contract Actions

Sec.
2405.202 Exceptions.

Subpart 2405.5—Paid Advertisements

2405.502 Authority.
AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.2—Synopsis of Proposed Contract Actions

2405.202 Exceptions.

(b) The Senior Procurement Executive shall make the written determination in accordance with FAR 5.202(b) that advance notice of proposed contract actions is not appropriate or reasonable.

[50 FR 46576, Nov. 8, 1985]

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Re-delegations of Authority, subject to the availability of funds.

[49 FR 7701, Mar. 1, 1984]

PART 2406—COMPETITION REQUIREMENTS

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

Sec.
2406.202 Establishing or maintaining alternative sources.

Subpart 2406.3—Other Than Full and Open Competition

2406.302-2 Unusual and compelling urgency.
2406.303 Justifications.
2406.304 Approval of the justification.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 3301 *et seq.*; 42 U.S.C. 3535(d).

SOURCE: 50 FR 46576, Nov. 8, 1985, unless otherwise noted.

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

2406.202 Establishing or maintaining alternative sources.

(b)(1) The HCA shall sign the Determination and Finding (D&F) required by FAR 6.202(b)(1).

Subpart 2406.3—Other Than Full and Open Competition

2406.302-2 Unusual and compelling urgency.

(d)(1)(ii) The HCA is the agency head's designee for the purposes of FAR 6.302-2(d)(1)(ii).

[77 FR 73526, Dec. 10, 2012]

2406.303 Justifications.

Justifications for Other Than Full and Open Competition must be prepared and approved using the latest version of HUD Form 24012.

[81 FR 13750, Mar. 15, 2016]

2406.304 Approval of the justification.

(a)(3) HUD's Chief Procurement Officer, as the Head of Contracting Activity, has delegated the authority to the Deputy Chief Procurement Officer to approve, in writing, justifications for other than full and open competition procurements for proposed contracts over \$13.5 million, but not exceeding \$68 million.

(c) A class justification for other than full and open competition shall be approved in writing by the Senior Procurement Executive.

[50 FR 46576, Nov. 8, 1985, as amended at 81 FR 13750, Mar. 15, 2016]

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

The Senior Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Departmental competition advocate.

[77 FR 73526, Dec. 10, 2012]

PART 2407—ACQUISITION PLANNING

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2407.1—Acquisition Plans

2407.102 Policy.

The Senior Procurement Executive is responsible for establishing and maintaining internal procedures that meet the criteria contained in FAR subpart 7.1 for acquisition planning and acquisition plan content.

[77 FR 73526, Dec. 10, 2012]

PART 2408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2408.4—Federal Supply Schedules

Sec.
2408.404 Pricing.
2408.405-6 Limiting sources.

Subpart 2408.8—Acquisition of Printing and Related Supplies

2408.802-70 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2408.4—Federal Supply Schedules

SOURCE: 81 FR 13750, Mar. 15, 2016, unless otherwise noted.

2408.404 Pricing.

(d) Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair).

GSA has determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, to be fair and reasonable for the purpose of establishing the schedule contract. GSA's determination does not relieve the ordering activity Contracting Officer from the responsibility of making a determination of fair and reasonable pricing for individual orders, BPAs, and orders under BPAs. Contracting Officers shall follow the general principles and techniques outlined in FAR Section 15.404-1, Proposal Analysis Techniques, to ensure that the final agreed-to price is fair and reasonable, keeping in mind that the complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

2408.405-6 Limiting sources.

(c)(2) Justifications for limiting sources, under the Federal Supply Schedules when exceeding the simplified acquisition threshold, must be prepared and approved using the latest version of HUD Form 24013.

(d)(3) HUD's Chief Procurement Officer, as the Head of Contracting Activity, has delegated the authority to the Deputy Chief Procurement Officer to approve, in writing, justifications for limited source considerations for a proposed Federal Supply Schedule order or Blanket Purchase Agreement (BPA) with an estimated value exceeding \$13.5 million, but not exceeding \$68 million.

Subpart 2408.8—Acquisition of Printing and Related Supplies

2408.802-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.208-71, Reproduction of Reports, in solicitations and contracts where the contractor is required to produce, as an end product, publications or other written materials.

[71 FR 2435, Jan. 13, 2006]

PART 2409—CONTRACTOR QUALIFICATIONS

Subpart 2409.1—Responsible Prospective Contractors

Sec.
2409.105 Procedures

Subpart 2409.4—Debarment, Suspension, and Ineligibility

2409.405 Effect of listing.
2409.407-1 General.
2409.470 HUD regulations on debarment, suspension, and ineligibility.

Subpart 2409.5—Organizational and Consultant Conflicts of Interest

2409.503 Waiver.
2409.507 Solicitation provisions and contract clause.
2409.507-1 Solicitation provisions.
2409.507-2 Contract clauses.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7701, Mar. 1, 1984, unless otherwise noted.

Subpart 2409.1—Responsible Prospective Contractors

2409.105 Procedures.

(a) The Contracting Officer shall perform a financial review when the Contracting Officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the Contracting Officer shall consider performing a financial review—

(1) Prior to award of a contract, when—

(i) The contractor is on a list requiring pre-award clearance or other special clearance before award;

(ii) The contractor is listed on the Consolidated List of Contractors Indebted to the Government, or is otherwise known to be indebted to the Government;

(iii) The contractor may receive Government assets such as contract financing payments or Government property;

(iv) The contractor is experiencing performance difficulties on other work; or

(v) The contractor is a new company or a new supplier of the item.

(2) At periodic intervals after award of a contract, when—

(i) Any of the conditions in paragraphs (a)(1)(ii) through (v) of this section are applicable; or

(ii) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

(b) The Contracting Officer shall obtain the type and depth of financial and other information that is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the Contracting Officer should not request information that is not necessary for protection of the Government's interests, the Contracting Officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(c) The Contracting Officer shall obtain the following information to the extent required to protect the Government's interest. In addition, if the Contracting Officer concludes that information not listed herein is required to determine financial responsibility, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the Contracting Officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, members, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract.

(7) Financing arrangement information that discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, *e.g.*, environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

[81 FR 13750, Mar. 15, 2016]≤

Subpart 2409.4—Debarment, Suspension, and Ineligibility

SOURCE: 77 FR 73526, Dec. 10, 2012, unless otherwise noted.

2409.405 Effect of listing.

(3) The Senior Procurement Executive is the agency head's designee under FAR 9.405(d)(3).

2409.407-1 General.

(d) The Senior Procurement Executive is the agency head's designee under FAR 9.407-1(d).

§ 2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424, and, notwithstanding any language to the contrary, apply to procurement contracts.

[78 FR 49698, Aug. 15, 2013]

2409.503

48 CFR Ch. 24 (10–1–16 Edition)

**Subpart 2409.5—Organizational
and Consultant Conflicts of Interest**

2409.507–2 Contract clauses.

2409.503 Waiver.

The Senior Procurement executive is the agency head's designee under FAR 9.503.

[77 FR 73526, Dec. 10, 2012]

2409.507 Solicitation provisions and contract clause.

The Contracting Officer shall insert a clause substantially the same as the clause at 2452.209–71, Limitation on Future Contracts, in solicitations and contracts for services above the simplified acquisition threshold whenever the Contracting Officer has reason to believe that the nature of the proposed contract requirements may present an organizational conflict of interest as defined at FAR subpart 9.5. The Contracting Officer shall describe in the clause the nature of the potential conflict and the negotiated terms and duration of the limitation. The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all solicitations and contracts.

[71 FR 2435, Jan. 13, 2006]

2409.507–1 Solicitation provisions.

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209–70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

[65 FR 3576, Jan. 21, 2000]

PART 2411 [Reserved]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2413.1—General [Reserved]

Subpart 2413.3—Simplified Acquisition Methods

Sec.

2413.301 Governmentwide commercial purchase card.

2413.305-2 Agency responsibilities.

2413.305-3 Conditions for use.

Subpart 2413.4—Imprest Fund [Reserved]

Subpart 2413.5—Purchase Orders [Reserved]

2413.505 Purchase order and related forms.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2413.1—General [Reserved]

Subpart 2413.3—Simplified Acquisition Methods

2413.301 Governmentwide commercial purchase card.

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

[60 FR 46155, Sept. 5, 1995. Redesignated at 64 FR 46095, Aug. 23, 1999]

2413.305-2 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

[60 FR 46155, Sept. 5, 1995. Redesignated at 64 FR 46095, Aug. 23, 1999]

2413.305-3 Conditions for use.

(a) Transaction limits above that established in FAR 13.305-3 may be ap-

proved by the Senior Procurement Executive.

[60 FR 46155, Sept. 5, 1995. Redesignated and amended at 64 FR 46095, Aug. 23, 1999]

Subpart 2413.4—Imprest Fund [Reserved]

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

PART 2414—SEALED BIDDING

Subpart 2414.4—Opening of bids and Award of Contracts

Sec.

2414.404 Rejection of bids.

2414.404-1 Cancellation of invitations after opening.

2414.407 Mistakes in bid.

2414.407-3 Other mistakes disclosed before award.

2414.407-4 Mistakes after award.

2414.408 Award.

2414.408-70 Award when only one bid is received.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7702, Mar. 1, 1984, unless otherwise noted.

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.404 Rejection of bids.

2414.404-1 Cancellation of invitations after opening.

(c) Invitations may be cancelled and all bids rejected before award but after opening when the Head of the Contracting Activity, as described in subpart 2402.1, determines in writing that cancellation is appropriate and consistent with FAR 14.404-1.

[50 FR 46577, Nov. 8, 1985]

2414.407

2414.407 Mistakes in bids.

2414.407-3 Other mistakes disclosed before award.

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid; or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

[57 FR 59788, Dec. 15, 1992. Redesignated at 61 FR 19470, May 1, 1996]

2414.407-4 Mistakes after award.

(d) For determinations under FAR 14.407-4(b), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

[61 FR 19470, May 1, 1996, as amended at 64 FR 46095, Aug. 23, 1999]

2414.408 Award.

2414.408-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

[49 FR 7702, Mar. 1, 1984; 51 FR 7948, Mar. 7, 1986, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19471, May 1, 1996]

PART 2415—CONTRACTING BY NEGOTIATION

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

Sec.

- 2415.203 Requests for proposals.
- 2415.204 Contract format.
- 2415.209 Solicitation provisions and contract clauses.

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Subpart 2415.3—Source Selection

- 2415.303 Responsibilities.
- 2415.304 Evaluation factors and significant subfactors.
- 2415.305 Proposal evaluation.
- 2415.308 Source selection decision.
- 2415.370 Solicitation provision.

Subpart 2415.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

- 2415.507 Protests against award.

Subpart 2415.6—Source Selection

- 2415.605 Content of unsolicited proposals.
- 2415.605-70 Unsolicited research proposals.
- 2415.606 Agency procedures.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 3301-3306 and 3105; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7703, Mar. 1, 1984, unless otherwise noted.

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

2415.203 Requests for proposals.

(a)(3) The contracting officer may limit the size of the technical and management portion of offers submitted in response to a request for proposals when the contracting officer determines that it is in the Government's best interest to do so.

[77 FR 73526, Dec. 10, 2012]

2415.204 Contract format.

(e) The HCA shall be responsible for making exemptions pursuant to FAR 15.204(e).

[77 FR 73526, Dec. 10, 2012]

2415.209 Solicitation provisions and contract clauses.

(a)(1) The Contracting Officer shall insert a provision substantially the same as the provision at 2452.215-70, Proposal Content, in all solicitations for negotiated procurements expected to exceed the simplified acquisition limit. The provision may be used in simplified acquisitions when it is necessary to obtain business proposal information in making the award selection. If the proposed contract requires work on, or access to, HUD systems or applications (see the clause at 2452.239-

70), the provision shall be used with its Alternate I. When the Contracting Officer has determined that it is necessary to limit the size of the technical and management portion of offers submitted by offerors, the provision shall be used with its Alternate II.

(2) The contracting officer shall insert the provision at 2452.215-71, Relative Importance of Technical Evaluation Factors to Cost or Price, in solicitations for contracts to be awarded using the tradeoff selection process (see FAR 15.101-1) expected to exceed the simplified acquisition limit.

[77 FR 73526, Dec. 10, 2012, as amended at 81 FR 13751, Mar. 15, 2016]

Subpart 2415.3—Source Selection

2415.303 Responsibilities.

(a)(1) Except as identified in paragraph (a)(2) of this section, HUD's Chief Procurement Officer, as the Senior Procurement Executive, designates Assistant Secretaries, or their equivalent, for requiring activities as the Source Selection Authorities for selections made using the tradeoff process. Assistant Secretaries may delegate this function to other departmental officials. This designation also applies to acquisitions not performed under the requirements of FAR part 15, but utilizing tradeoff analysis.

(2) HUD's Chief Procurement Officer, as the Senior Procurement Executive, designates HUD's Office of General Counsel (OGC) as the Source Selection Authority, regardless of contract amount, in all Headquarters procurements for legal services, unless (s)he specifically designates another agency official to perform that function. Any Headquarters office desiring to procure outside legal services for the Department shall obtain OGC approval before advertising or soliciting proposals for such services. OGC shall determine whether the services are necessary and the extent of OGC involvement in the procurement.

(b)(1) The technical evaluation requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). The TEP may consist of any number of members as appropriate to the acquisition, with one member serving as the chairperson.

As needed, the TEP may include advisors and committees to focus on specific technical areas or concerns. The TEP is responsible for fully documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

[77 FR 73527, Dec. 10, 2012, as amended at 81 FR 13751, Mar. 15, 2016]

2415.304 Evaluation factors and significant subfactors.

(c)(3)(i) The extent of participation of small businesses in performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor, shall be addressed in the source selection for contracts to be awarded using the tradeoff source selection process (see FAR 15.101-1) that require the use of the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(d) The solicitation shall state the basis for the source selection decision as either the "lowest price technically acceptable" (LPTA) process or the "tradeoff" process (as defined at FAR subpart 15.1).

[77 FR 73527, Dec. 10, 2012]

2415.305 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(3) *Technical evaluation when tradeoffs are performed.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the tradeoff process, predetermined threshold levels of technical acceptability for proposals shall not be employed. A technical evaluation report, which complies with FAR

2415.308

15.305(a)(3), shall be prepared and signed by the technical evaluators, furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file.

[50 FR 46577, Nov. 8, 1985, as amended at 57 FR 59789, Dec. 15, 1992; 60 FR 46156, Sept. 5, 1995; 61 FR 19471, May 1, 1996. Redesignated and amended at 64 FR 46096, Aug. 23, 1999; 77 FR 73527, Dec. 10, 2012; 81 FR 13751, Mar. 15, 2016]

2415.308 Source selection decision.

After receipt and evaluation of final proposal revisions, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

[64 FR 46096, Aug. 23, 1999]

2415.370 Solicitation provision.

The contracting officer shall insert the provision at 2452.215-72, Evaluation of Small Business Participation, in solicitations for contracts that require the use of the FAR clause in 52.219-9, "Small Business Subcontracting Plan," that will be awarded using the tradeoff source selection process (see FAR 15.101-1).

[77 FR 73527, Dec. 10, 2012]

Subpart 2415.5—Preaward, Award, and Postaward notifications, Protests, and Mistakes

2415.507 Protests against award.

Protests against awards of negotiated procurements shall be processed in accordance with FAR subpart 33.1 and HUDAR subpart 2433.1

[50 FR 46578, Nov. 8, 1985. Redesignated at 61 FR 19471, May 1, 1996, and further redesignated at 64 FR 46096, Aug. 23, 1999]

Subpart 2415.6—Source Selection

SOURCE: 50 FR 46577, Nov. 8, 1985, unless otherwise noted.

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2415.605 Content of unsolicited proposals.

2415.605-70 Unsolicited research proposals.

FAR subpart 15.6 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

[49 FR 7703, Mar. 1, 1984. Redesignated and amended at 64 FR 46095, Aug. 23, 1999]

2415.606 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR subpart 15.6. Proposals, as used in this section, shall mean proposals for procurement contracts with the Department and shall not include proposals or applications for assistance, including grants or cooperative agreements.

(b) Unless otherwise specified in a FEDERAL REGISTER announcement, unsolicited proposals should be submitted to:

(1) For research: Department of Housing and Urban Development, Office of Policy Development and Research, PD&R Correspondence Unit, 451 Seventh Street, SW., Washington, DC 20410-0001.

(2) For all others: Department of Housing and Urban Development, Office of the Chief Procurement Officer, 451 Seventh Street, SW., Washington, DC 20410-0001.

(c) Individuals or organizations interested in submitting unsolicited proposals should contact the appropriate office in paragraph (b) of this section for additional information on proposal requirements.

[71 FR 2435, Jan. 13, 2006]

PART 2416—TYPES OF CONTRACTS

Subpart 2416.3—Cost-Reimbursement Contracts

Sec.

2416.307 Contract clauses.

Subpart 2416.4—Incentive Contracts

2416.406 Contract clauses.

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.

2416.506 Solicitation provisions and contract clauses.

2416.506-70 Unpriced delivery/task orders.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7706, Mar. 1, 1984, unless otherwise noted.

Subpart 2416.3—Cost-Reimbursement Contracts

2416.307 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.216-79, Estimated Cost (No Fee), in all cost-reimbursement (no fee) type solicitations and contracts.

(b) The contracting officer shall insert the clause at 2452.216-80, Estimated Cost and Fixed-Fee, in all cost-plus-fixed fee type solicitations and contracts.

[77 FR 73527, Dec. 10, 2012]

Subpart 2416.4—Incentive Contracts

2416.406 Contract clauses.

(e)(1) The Contracting Officer shall insert the clause at 2452.216-70, Estimated Cost, Base Fee and Award Fee, in all cost-plus-award-fee solicitations and contracts.

(2) The Contracting Officer shall insert the clause at 2452.216-71, Award Fee, in all fixed-price-award-fee solicitations and contracts.

(3) The Contracting Officer shall insert the clauses at 2452.216-72, Determination of Award Fee Earned, 2452.216-73, Performance Evaluation Plan, and 2452.216-74, Distribution of Award Fee, in all award-fee solicitations and contracts. The Contracting Officer may modify the clauses to meet individual situations, and any clause or specific requirement therein may be deleted when it is not applicable to a given contract. When including the clause at 2452.216-74, Distribution of Award Fee, in cost-plus-award-fee contracts, the Contracting Officer shall use the clause with its Alternate I.

(4) When including the clauses at 2452.216-70, Estimated Cost, Base Fee and Award Fee, and 2452.216-71 Award Fee, in indefinite-delivery solicitations and contracts under which all supplies or services will be obtained by issuance of task or delivery orders, the Contracting Officer shall substitute the word "order" for the word "contract."

[71 FR 2436, Jan. 13, 2006]

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.

(a) The contracting officer shall be the ordering official for all task orders except as provided for herein. The contracting officer may designate an ordering official when orders are to be placed on a firm fixed-price basis, the prices of the specific services or supplies to be provided under the order are set forth in the contract, and there is no negotiation of order terms. The contracting officer shall not designate ordering officials:

(1) For contracts for services where prices are not tied to delivery of a completed service;

(2) For any contracts where discounts need to be negotiated; or

(3) In any other circumstances where adjustment of contract price or any other terms and conditions is necessary.

(b)(6) The Departmental competition advocate also serves as the Departmental task and delivery order ombudsman in accordance with FAR 16.505(b)(6). In addition to the duties

2416.506

set forth at FAR 16.505(b)(6), the ombudsman shall recommend any corrective action regarding affording fair opportunity to contractors to compete for orders to the responsible contracting officer.

[77 FR 73527, Dec. 10, 2012]

2416.506 Solicitation provisions and contract clauses.

2416.506-70 Solicitation provisions and contract clauses.

(a) *Unpriced task orders.* The Contracting Officer shall insert the clause at 2452.216-75, Unpriced Task Orders, in contracts in which task orders are individually negotiated and when there may be a need to issue unpriced task orders. The Contracting Officer shall ensure that the cost of the work authorized by any unpriced task order is not in excess of the funds available for the order. The Contracting Officer shall establish the time period for the definitization of each unpriced order and insert the anticipated date of definitization in the clause. The HCA shall approve periods that exceed 180 days.

(b) *Minimum and maximum quantities or amounts for order.* The contracting officer shall insert a clause substantially the same as 2452.216-76, Minimum and Maximum Quantities or Amounts for Order, in all indefinite-quantity and requirements solicitations and contracts. When the clause is used for requirements solicitations and contracts, the contracting officer may either delete paragraph (a) or insert “none” for the minimum quantity or amount.

(c) *Estimated quantities—requirements contract.* The Contracting Officer shall insert the provision at 2452.216-77, Estimated Quantities—Requirements Contract, in all solicitations for requirements contracts.

(d) *Ordering procedures.* The Contracting Officer shall insert the clause at 2452.216-78, Ordering Procedures, in all indefinite-delivery solicitations and contracts. If the supplies or services to be ordered under the contract are pre-priced in the contract, the orders will be issued on a fixed-price basis, and no order terms are negotiated before issuance, the Contracting Officer shall use the clause with its Alternate I. If

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the contract provides for the issuance of task orders for services on a negotiated basis (see also 2416.505), the Contracting Officer shall use the clause with its Alternate II.

[71 FR 2436, Jan. 13, 2006, as amended at 77 FR 73527, Dec. 10, 2012]

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

(c) The HCA shall approve additional time periods for definitization of letter contracts authorized by the Contracting Officer pursuant to FAR 16.603-2(c).

[64 FR 46096, Aug. 23, 1999]

PART 2417—SPECIAL CONTRACTING METHODS

Subpart 2417.2—Options

Sec.

2417.204 Contracts.

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

AUTHORITY: 31 U.S.C. 1535; 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2417.2—Options

2417.204 Contracts.

(e)(1) The Senior Procurement Executive (SPE) is authorized to approve contract periods for other than information technology contracts that exceed the 5-year limit set forth at FAR 17.204(e) that are not otherwise limited by statute (e.g., the Service Contract Act). Except as provided for in paragraphs (e)(2) and (4) of this section, the SPE shall approve any contract period that will exceed 5 years, including all option periods, prior to the award of the basic contract.

(2) With regard to HUD indefinite-delivery contracts, the “contract period” requiring the SPE’s prior approval in paragraph (e)(1) of this section shall mean the ordering period of a contract.

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Unless otherwise specified within the contract, the 5-year limit shall not apply to the period that any task or delivery order issued within the contract's ordering period extends beyond the final end date of the contract's ordering period, regardless of whether the performance period of the order causes the total period of the contract to exceed 5 years. The issuance of any such task or delivery order does not require the SPE's approval. Task or delivery orders with end dates extending beyond the ordering period of the contract may not exceed the final delivery date that the contracting officer has stated in the applicable indefinite-delivery FAR clause included in the contract (i.e., 52.216-20, "Definite Quantity," paragraph (d); 52.216-21, "Requirements," paragraph (f); or 52.216-22, "Indefinite Quantity," paragraph (d)).

(3) The SPE's authority described in paragraphs (e)(1) and (2) of this section shall not be used as the basis to retroactively increase or extend the period of any existing contract.

(4) The SPE is not required to approve any option properly exercised

pursuant to the FAR clause at 52.217-8, "Option to Extend Services," that extends the contract period beyond 5 years; provided that the total length of all options exercised pursuant to FAR clause 52.217-8 may not exceed 6 months; and provided that exercise of any such options shall be in accordance with FAR 37.111. Any proposed extension of a contract beyond the 6-month maximum permitted by FAR 52.217-8 shall be considered a new requirement and shall be subject to the competition requirements of FAR part 6.

[77 FR 73528, Dec. 10, 2012]

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

[53 FR 46535, Nov. 17, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS PROGRAMS

Subpart 2419.2—Policies

Sec.

2419.201 General policy.

Subpart 2419.5—Set-Asides for Small Business

2419.503 [Reserved]

Subpart 2419.7—The Small Business Subcontracting Program

2419.708 Solicitation provisions and contract clauses.

Subpart 2419.8—Small Business Administration Section (8)(a) Program

2419.800 General.

2419.803 Selecting acquisitions for the 8(a) Program.

2419.803-70 Procedures for simplified acquisitions under the partnership agreement.

2419.804 Evaluation, offering, and acceptance.

2419.804-2 Agency offering.

2419.804-3 SBA acceptance.

2419.804-370 SBA acceptance under partnership agreements for acquisitions exceeding the simplified acquisition threshold.

2419.805 Competitive 8(a).

2419.805-2 Procedures.

2419.806 Pricing the 8(a) contract.

2419.808 Contract negotiation.

2419.808-1 Sole source.

2419.811 Preparing the contracts.

2419.811-1 Sole source.

2419.811-2 Competitive.

2419.811-3 Contract clauses.

2419.812 Contract administration.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2419.2—Policies

2419.201 General policy.

(d) The Director of HUD's Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the administration of the HUD small business program and for performing all functions and duties prescribed in FAR 19.201(d). This includes Department-wide responsibility for developing, implementing, executing, and managing these programs; providing advice on

these programs; and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged, and women-owned small business; HUBZone small business; veteran-owned small business; and service-disabled veteran-owned small business concerns.

(e) The Director of OSDBU shall designate small business specialists who shall advise and assist HUD's contracting activity and small business concerns as described in paragraph (d) on all matters related to small business participation in HUD acquisitions. Small business specialists shall perform the following functions:

(1) Maintain a program designed to locate capable small-business sources as referenced in paragraph (d) of this section for current and future procurements;

(2) Coordinate inquiries and requests for advice from such businesses on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that all such business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain participation by such businesses in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from such businesses;

(6) Advise such businesses with respect to the financial assistance available under existing laws and regulations and assist such businesses in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning such businesses participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-

asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

[49 FR 7706, Mar. 1, 1984, as amended at 50 FR 46578, Nov. 8, 1985; 61 FR 19471, May 1, 1996; 77 FR 73528, Dec. 10, 2012]

Subpart 2419.5—Set-Asides for Small Business

2419.503 [Reserved]

Subpart 2419.7—The Small Business Subcontracting Program

2419.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall insert clause at 2452.219-73, "Incorporation of Subcontracting Plan," in solicitations and contracts when a subcontracting plan is required. The contracting officer shall insert the provision at 2452.219-74, "Small Business Subcontracting Goals," in solicitations for contracts that are required to include the FAR clauses at 52.219-8, "Utilization of Small Business Concerns," and 52.219-9, "Small Business Subcontracting Plan."

(d) The contracting officer shall insert the provision at 2452.219-70, Small Business Subcontracting Plan Compliance, in solicitations for contracts that are expected to exceed the dollar thresholds set forth at FAR 19.702 and are required to include the clause at FAR 52.219-9, Small Business Subcontracting Plan.

[77 FR 73528, Dec. 10, 2012]

Subpart 2419.8—Small Business Administration Section (8)(a) Program

2419.800 General.

(f) By Partnership Agreement between the SBA and HUD, the SBA delegated to HUD's Senior Procurement Executive its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Under the Partnership

Agreement, a contract may be awarded directly to an 8(a) firm on either a sole-source or competitive basis. The SBA reserves the right to withdraw the delegation issued as a result of the Partnership Agreement; however, any such withdrawal shall have no effect on contracts already awarded under the Partnership Agreement.

[77 FR 73528, Dec. 10, 2012]

2419.803 Selecting acquisitions for the 8(a) Program.

2419.803-70 Procedures for simplified acquisitions under the partnership agreement.

(a) HUD contracting officers may use the procedures of FAR part 13 and HUDAR part 2413 to make purchases not exceeding the simplified acquisition threshold from 8(a) Participants. The following apply to such acquisitions:

(1) Neither offering letters to, nor acceptance letters from the SBA are required.

(2) The contracting officer will use the Central Contractor Registration (CCR) database on the Internet (<http://www.ccr.gov>) to establish that the selected 8(a) firm is a current program participant.

(b) Once an 8(a) contractor has been identified, the contracting officer will establish the price with the selected 8(a) contractor.

(c) For acquisitions requiring an award document (e.g., purchase order), the contracting officer will:

(1) Prepare and issue an award document in accordance with the applicable provisions of FAR part 13 and HUDAR part 2413. The applicable clauses prescribed in 2419.811-3 shall be included in the award document. The contracting officer will issue the award document directly to the 8(a) firm; and

(2) Forward to the SBA District Office serving the 8(a) firm a copy of the award document within 5 days after the award is issued.

[77 FR 73528, Dec. 10, 2012]

2419.804

2419.804 Evaluation, offering, and acceptance.

2419.804-2 Agency offering.

(d) When applicable, the notification must identify that the offering is in accordance with the Partnership Agreement identified in 2419.800.

[77 FR 73529, Dec. 10, 2012]

2419.804-3 SBA acceptance.

2419.804-370 SBA acceptance under partnership agreements for acquisitions exceeding the simplified acquisition threshold.

(a) The following procedures apply to the acceptance of requirements covered by the Partnership Agreement for acquisitions that exceed the simplified acquisition threshold.

(1) The SBA's decision whether to accept the requirement will be transmitted to HUD in writing within 5 working days of receipt of the offer.

(2) The SBA may request, and HUD may grant, an extension beyond the 5-day limit.

(3) SBA's acceptance letters should be faxed or emailed to HUD.

(4) If HUD has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the contracting officer may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of SBA's acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

[77 FR 73529, Dec. 10, 2012]

2419.805 Competitive 8(a).

2419.805-2 Procedures.

(b)(3) For requirements exceeding the simplified acquisition threshold that are processed under the Partnership Agreement cited in 2419.800, the contracting officer shall submit the name, address, and telephone number of the low bidder (sealed bid requirements) or the apparent successful offeror (negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days

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of the receipt of the request. If the firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror (as applicable) to the cognizant SBA field office.

[77 FR 73529, Dec. 10, 2012]

2419.806 Pricing the 8(a) contract.

(a) For contracts awarded under the Partnership Agreement cited in 2419.800, when required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor.

[77 FR 73529, Dec. 10, 2012]

2419.808 Contract negotiation.

2419.808-1 Sole source.

(a) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the 8(a) contractor is responsible for negotiating with HUD within the time frame established by the contracting officer. If the 8(a) contractor does not negotiate within the established time frame, and HUD cannot allow additional time, HUD, after notification and approval by SBA, may proceed with the acquisition from other sources.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, HUD is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

[77 FR 73529, Dec. 10, 2012]

2419.811 Preparing the contracts.

2419.811-1 Sole source.

(e) If the award is to be made under the Partnership Agreement cited in 2419.800, the contracting officer shall prepare the instrument to be awarded to the 8(a) firm in accordance with the normal HUD procedures for non-8(a) contracts, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall include appropriate contract clauses, as

necessary, to reflect that the acquisition is an 8(a) contract awarded under the authority of the Partnership Agreement cited in 2419.800.

(3) The contracting officer shall include SBA's requirement number on the contract unless the acquisition does not exceed the simplified acquisition threshold.

(4) A single award document shall be used between HUD and the 8(a) contractor. As such, no signature on the part of the SBA is required; a single signature by the HUD contracting officer shall suffice. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "awarded to" or "contractor name" block on the appropriate forms.

[77 FR 73529, Dec. 10, 2012]

2419.811-2 Competitive.

(a) If the award is to be made under the Partnership Agreement cited in 2419.800, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole-source contracts as set forth in 2419.811-1.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the process for obtaining signatures shall be as specified in 2419.811-1(e).

[77 FR 73529, Dec. 10, 2012]

2419.811-3 Contract clauses.

(d)(3) The contracting officer shall use the clause at FAR 52.219-18, "Notification of Competition Limited to Eligible 8(a) Concerns," with the clause at 2452.219-71, "Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III to FAR 52.219-18," for competitive 8(a) acquisitions processed under the Partnership Agreement cited in 2419.800.

(f) In contracts and purchase orders awarded under the Partnership Agreement cited at 2419.800, the contracting officer shall substitute the clause at 2452.219-72, Section 8(a) Direct Award, for the clauses at FAR 52.219-11, "Special 8(a) Contract Conditions;" FAR 52.219-12, "Special 8(a) Subcontract

Conditions;" and FAR 52.219-17, "Section 8(a) Award."

[77 FR 73530, Dec. 10, 2012]

2419.812 Contract administration.

(e) Awards under the Partnership Agreement cited in 2419.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at 2452.219-71, Section 8(a) Direct Award (Deviation), which requires the 8(a) contractor to notify the SBA and the HUD contracting officer when ownership of the firm is being transferred.

[77 FR 73530, Dec. 10, 2012]

PART 2420 [RESERVED]

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 29 U.S.C. 793; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46535, Nov. 17, 1988, unless otherwise noted.

Subpart 2422.14—Employment of the Handicapped

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222-70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in solicitations and contracts when the contract will require the contractor (including contractor employees and subcontractors) to hold meetings, conferences or seminars.

[71 FR 2437, Jan. 13, 2006]

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2424.1—Protection of Individual Privacy

Sec.
2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.203 Policy.

2424.103

AUTHORITY: 5 U.S.C. 552, 552a; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.203 Policy.

See 24 CFR part 15 for the HUD regulations which implement the Freedom of Information Act.

[49 FR 7708, Mar. 1, 1984. Redesignated at 64 FR 46097, Aug. 23, 1999]

PART 2425—TRADE AGREEMENTS ACT

AUTHORITY: 42 U.S.C. 3535(d).

2425.402 Policy.

(a)(1) It is the Department's policy to determine whether the Trade Agreements Act applies based on the total estimated dollar value of the proposed acquisition before the solicitation is issued, including all line items and options.

[57 FR 59790, Dec. 15, 1992, as amended at 64 FR 46097, Aug. 23, 1999]

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

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Subpart 2426.70—Minority Business Enterprises

2426.7001-2426.7002 [Reserved]

PART 2427—PATENTS, DATA, AND COPYRIGHTS

Subpart 2427.3—Patent Rights Under Government Contracts

Sec.

2427.305 Administration of patent rights clauses.

2427.305-2 Administration by the Government.

Subpart 2427.4—Rights in Data and Copyrights

2427.470 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2427.3—Patent Rights Under Government Contracts

2427.305 Administration of patent rights clauses.

2427.305-2 Administration by the Government.

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

Subpart 2427.4—Rights in Data and Copyrights

2427.470 Contract clause.

The contracting officer shall insert the clause 2452.227-70, Government Information, in all solicitations and contracts when the Government will provide information to the contractor, and/or when the contractor will obtain information on the Government's behalf to perform work required under the contract. The contracting officer shall describe all information to be

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2427.470

provided to the contractor in paragraph (d)(1) of the clause.

[77 FR 73530, Dec. 10, 2012]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

Subpart 2428.1—Bonds

Sec.

2428.106 Administration.

2428.106-6 Furnishing information.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

Subpart 2428.1—Bonds

2428.106 Administration.

2428.106-6 Furnishing information.

(c) The Contracting Officer shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106-6.

[64 FR 46097, Aug. 23, 1999]

PART 2429—TAXES

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2429.1—General

2429.101 Resolving tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request, in writing, the assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the

outcome of the tax problem. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

[60 FR 46157, Sept. 5, 1995]

PART 2432—CONTRACT FINANCING

2432.006 Reduction or suspension of contract payments upon finding of fraud.

2432.006-1 General.

2432.006-2 Definitions.

2432.006-3 Responsibilities.

2432.006-4 Procedures.

2432.007 Contract financing payments.

Subpart 2432.1—Non-Commercial Item Purchase Financing

Sec.

2432.114 Unusual contract financing.

Subpart 2432.2—Commercial Item Purchase Financing

2432.201 Statutory authority.

Subpart 2432.4—Advance Payments for Non-Commercial Items

2432.402 General.

2432.407 Interest.

Subpart 2432.7—Contract Funding

2432.703-1 General.

2432.704 Limitation of cost or funds.

2432.704-70 Incrementally funded fixed-price contracts.

2432.705 Contract clauses.

Subpart 2432.9—Prompt Payment

2432.903 Policy.

2432.906 Making payments.

2432.908 Contract clauses.

AUTHORITY: 31 U.S.C. 3901-3905; 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

2432.006 Reduction or suspension of contract payments upon finding of fraud.

2432.006-1 General.

The Senior Procurement Executive is the agency head for the purposes of

FAR 32.006-1. In accordance with FAR 32.006-1(c), the Senior Procurement Executive may delegate the remedy coordination official duties to personnel in the Office of the Chief Procurement Officer at or above the Level IV of the Executive Service.

[77 FR 73530, Dec. 10, 2012]

2432.006-2 Definitions.

“Remedy coordination official” means the Senior Procurement Executive.

[77 FR 73530, Dec. 10, 2012]

2432.006-3 Responsibilities.

(b) HUD personnel shall report immediately in writing when a contractor’s request for advance, partial, or progress payments is suspected to be fraudulent. The report shall be made to the contracting officer and the remedy coordination official. The report shall describe the events, acts, and conditions that indicate the apparent or suspected violation and include all pertinent documents. The remedy coordination official will consult with, and refer cases to, the Office of the Inspector General for investigation, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the Senior Procurement Executive.

[77 FR 73530, Dec. 10, 2012]

2432.006-4 Procedures.

The Senior Procurement Executive is the agency head for the purposes of FAR 32.006-4.

[77 FR 73530, Dec. 10, 2012]

2432.007 Contract financing payments.

(a) The Senior Procurement Executive is the agency head for the purposes of FAR 32.007(a).

[77 FR 73530, Dec. 10, 2012]

Subpart 2432.1—Non-Commercial Item Purchase Financing

2432.114 Unusual contract financing.

The Senior Procurement Executive is the agency head for the purpose of FAR 32.114.

[65 FR 3573, Jan. 21, 2000; 65 FR 6444, Feb. 9, 2000]

Subpart 2432.2—Commercial Item Purchase Financing

2432.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

[65 FR 3573, Jan. 21, 2000]

Subpart 2432.4—Advance Payments for Non-Commercial Items

2432.402 General.

(e)(1) The determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the HCA.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

[60 FR 46157, Sept. 5, 1995, as amended at 64 FR 46097, Aug. 23, 1999]

2432.407 Interest.

(d) The Senior Procurement Executive is the agency head’s designee for the purposes of FAR 32.407(d).

[65 FR 3573, Jan. 21, 2000]

Subpart 2432.7—Contract Funding

2432.703-1 General.

(b)(1) Except as described herein, a fixed-price contract may be funded incrementally only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract or option; and

(ii) The contract (excluding any options) or any exercised option—

(A) Is for severable services; and

(B) Does not exceed one year in length; and

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

(iii) If applicable, the contract uses funds available from multiple (2 or more) fiscal years and Congress has otherwise authorized incremental funding.

2432.703-3

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

[77 FR 73530, Dec. 10, 2012, as amended at 81 FR 13752, Mar. 15, 2016]

2432.703-3 Contracts crossing fiscal years.

(b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year.

[65 FR 3573, Jan. 21, 2000]

2432.704 Limitation of cost or funds.

2432.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 2452.232-72, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the affected contract line items (CLINs) or contract, as applicable; or

(3) Considering whether to allot additional funds; and

(i) The contractor is required by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate the affected CLINs or contract, as applicable, for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 2452.232-72, "Limitation of Government's obligation," sufficient funds are allotted to the contract to cover the total amount

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payable to the contractor in the event of termination for the convenience of the Government.

[77 FR 73531, Dec. 10, 2012]

2432.705 Contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.232-72, "Limitation of Government's Obligation," in solicitations and resultant incrementally funded fixed-price contracts as authorized by 2432.703-1. The Contracting Officer shall insert the information required in the table in paragraph (b) and the notification period in paragraph (c) of the clause.

(b) The Contracting Officer shall insert the clause at 2452.232-74, "Not To Exceed Limitation" in all solicitations and contracts where the total estimated funds needed for the performance period are not yet obligated.

[81 FR 13752, Mar. 15, 2016]

Subpart 2432.9—Prompt Payment

2432.903 Policy.

(a) The Senior Procurement Executive is the agency head's designee for the purposes of FAR 32.903(a).

[77 FR 73531, Dec. 10, 2012]

2432.906 Making payments.

(a) *General.* The authority to make the determination prescribed in FAR 32.906(a) is delegated to the HCA. Before making this determination, the HCA shall consult with the appropriate payment office to ensure that procedures are in place to permit timely payment.

[77 FR 73531, Dec. 10, 2012]

2432.908 Contract clauses.

(c)(1) The contracting officer shall insert the clause at 2452.232-73, Constructive Acceptance Period, in solicitations and contracts when the contracting officer has determined that an acceptance period longer than the 7 days provided for in the FAR clause at 52.232-25, "Prompt Payment," is needed.

(2) The contracting officer shall insert a clause substantially the same as provided at 2452.232-70, Payment Schedule and Invoice Submission (Fixed-price), in fixed-price contracts other

than performance-based contracts under which performance-based payments will be used.

(3) The contracting officer shall insert a clause substantially the same as provided at 2452.232-71, Voucher Submission, in all cost-reimbursement, time-and-materials, and labor-hour type solicitations and contracts. The contracting officer shall insert the billing period agreed upon with the contractor (see also the FAR clause at 52.216-7, "Allowable Cost and Payment").

(4) The Contracting Officer may substitute appropriate language for the clauses in paragraph (c)(2) and (3) of this clause when payment under the contract will be made on the basis of other than the submission of an invoice or voucher; e.g., directly from proceeds of property sales.

[77 FR 73531, Dec. 10, 2012]

PART 2433—PROTESTS, DISPUTES, AND APPEALS

Sec.

2433.000 Scope of part.

Subpart 2433.1—Protests

2433.102 General.

2433.102-70 Responsibility.

2433.103 Protests to the agency.

2433.104 Protests to GAO.

2433.106 Solicitation provision.

AUTHORITY: 31 U.S.C. 3551-3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

2433.000 Scope of part.

This part identifies the responsible agents and sets forth procedural requirements for handling protests.

[51 FR 40333, Nov. 6, 1986]

Subpart 2433.1—Protests

2433.102 General.

2433.102-70 Responsibility.

With the exception of protests filed directly with the Department pursuant to FAR 33.103, the Office of General Counsel has responsibility for handling matters relating to protests against award of contracts by the Department.

All written communications from the Department to the GAO or other adjudicating body shall be made by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

[64 FR 46097, Aug. 23, 1999]

2433.103 Protests to the agency.

(d)(2) Appeals of Contracting Officer protest decisions shall include the information required at FAR 33.103(d)(2)(i), (ii), (iii), (iv), (v) and (vi).

(d)(4)(i) Protesters may request an appeal of the Contracting Officer's decision on a protest. Such requests shall be made in writing to the cognizant HCA not later than 10 days after receipt of the Contracting Officer's decision.

(ii) The HCA, in consultation with the Office of General Counsel, shall make all independent reviews of the Contracting Officer's decision requested by protesters in accordance with FAR 33.103(d)(4) and provide the protester with the HCA's decision on the appeal.

(f)(1) A determination by the Contracting Officer to award a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

(f)(3) A determination by the Contracting Officer to not suspend performance of a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

[64 FR 46097, Aug. 23, 1999]

2433.104 Protests to GAO.

(a)(1) *General.* When advised by GAO of the receipt of a protest, the Office of General Counsel shall immediately inform the contracting activity. The Contracting Officer shall notify the Office of General Counsel upon receipt of the copy of the protest from the protestor.

(2) Upon receipt by the Department of a written request for a formal report

2433.106

relating to a protest, the Office of General Counsel, with appropriate assistance from the Contracting Officer, shall prepare and file the report in accordance with GAO requirements at 4 CFR part 21.

(c) *Protests after award.* Protests received after award shall be treated in the same manner as those filed with GAO before award in accordance with paragraphs (a)(1) and (a)(2) of this section.

(d) *Findings and notice.* When the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 33.104(b)(1)(i-ii), or to continue contractor performance as authorized by FAR 33.104(c)(2), that determination of the intent to make an award or to continue contract performance shall be approved by the HCA after consultation with the Office of General Counsel.

(g) *Notice to GAO.* If the HCA proposes not to comply with a GAO recommendation concerning the resolution of a protest of a procurement award, prior to reporting to the Comptroller General concerning that decision, the HCA shall obtain the concur-

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rence of the Office of General Counsel and the Senior Procurement Executive.

[50 FR 46578, Nov. 8, 1985, as amended at 51 FR 40333, Nov. 6, 1986; 57 FR 59790, Dec. 15, 1992]

2433.106 Solicitation provision.

The Contracting Officer shall insert the provision at 2452.233-70, Review of Contracting Officer Protest Decisions, in all solicitations for contracts expected to exceed the simplified acquisition threshold.

[64 FR 46097, Aug. 23, 1999]

PART 2434—MAJOR SYSTEM ACQUISITIONS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A-109. Such procedures have been set out in internal Departmental directives.

[53 FR 46537, Nov. 17, 1988]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

2436.602-4 Selection authority.

2436.602-5 Short selection processes for contracts not to exceed the small purchase limitation.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed chairperson. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) The cognizant program office head for boards appointed at the field level.

(c) *Conflict of interest*. Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR part 0, Standards of Conduct, regarding conflicts of interest. If at any time dur-

ing the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the chairperson for resolution and proper action. The chairperson will refer the matter to legal counsel.

(d) *Confidentiality*. The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

[49 FR 7708, Mar. 1, 1984, as amended at 57 FR 59790, Dec. 15, 1992; 60 FR 46157, Sept. 5, 1995; 65 FR 3576, Jan. 21, 2000]

2436.602-4 Selection authority.

(a) The final selection decision shall be made by the cognizant Primary Organization Head in headquarters, or field program office head.

[65 FR 3577, Jan. 21, 2000]

2436.602-5 Short selection processes for contracts not to exceed the small purchase limitation.

The short selection process described in FAR 36.602-5(a) is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[49 FR 7708, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 57 FR 59791, Dec. 15, 1992; 64 FR 46098, Aug. 23, 1999]

PART 2437—SERVICE CONTRACTING

Subpart 2437.1—Service Contracts—General

Sec.

2437.110 Solicitation provisions and contract clauses.

Subpart 2437.2—Advisory and Assistance Services

2437.204 Guidelines for determining availability of personnel.

2437.110

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Subpart 2437.1—Service Contracts—General

2437.110 Solicitation provisions and contract clauses.

(e)(1) The Contracting Officer shall insert the clause at 2452.237-70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(2) The Contracting Officer shall insert the clause at 2452.237-73, “Conduct of Work and Technical Guidance,” in all solicitations and contracts for services.

(3) The contracting officer shall insert the clause at 2452.237-75, Access to HUD Facilities, in all solicitations and contracts when contractor employees, including subcontractors and consultants, will be required to regularly work in or have access to any HUD facilities (as distinct from nongovernment employee visitors to government facilities).

(4) The Contracting Officer shall insert the clause at 2452.237-77, Temporary Closure of HUD Facilities, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

(5) The Contracting Officer shall insert the clause at 2452.237-79, “Post Award Conference,” in all solicitations and contracts for services when the contractor will be required to attend a post-award orientation conference. The Contracting Officer shall indicate whether the contractor must attend the conference in person or via electronic communication. The Contracting Officer shall use Alternate I when the Post Award Conference will be conducted by telephone or video conferencing.

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(6) The Contracting Officer shall insert the clause at 2452.237-81, “Labor Categories, Unit Prices Per Hour and Payment,” in all indefinite quantity and requirements solicitations and contracts when level of effort task orders will be issued.

[77 FR 73531, Dec. 10, 2012, as amended at 81 FR 13752, Mar. 15, 2016]

Subpart 2437.2—Advisory and Assistance Services

2437.204 Guidelines for determining availability of personnel.

(a) The Senior Procurement Executive is the agency head for the purpose of FAR 37.204.

[71 FR 2437, Jan. 13, 2006]f

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

2439.107 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.239-70, Access to HUD Systems, in solicitations and contracts when the contract will require contractor employees, including subcontractors and consultants, to have access to any HUD information system(s) as defined in the clause.

(b) The contracting officer shall insert the clause at 48 CFR 2452.239-71, Information Technology Virus Security, in solicitations and contracts under which the contractor will provide information technology hardware, software or data products.

[64 FR 46098, Aug. 23, 1999, as amended at 65 FR 3577, Jan. 21, 2000; 77 FR 73531, Dec. 10, 2012]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2442.3—Contract Administration Office Functions

Sec.

2442.302-70 Contract clause.

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1107 Contract clause.

Subpart 2442.15—Contractor Performance Information

2442.1502 Policy.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov 17, 1988, unless otherwise noted.

Subpart 2442.3—Contract Administration Office Functions

2442.302-70 Contract clause.

The contracting officer shall include clause 2452.242-72, Post-award Orientation Conference, in solicitations and contracts when the contractor will be required to attend a post-award orientation conference. The contracting officer shall indicate whether the contractor must attend the conference in person or via electronic communication.

[77 FR 73532, Dec. 10, 2012]

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242-70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional

indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1107 Contract clause.

(a) The Contracting Officer shall insert a clause substantially the same as the clause at 2452.242-71, Contract Management System, in solicitations and contracts when all of the following conditions apply:

(1) The contract exceeds \$500,000, including all options;

(2) The contract requires services of an analytical nature (e.g., applied social science research); and

(3) The contract requires the delivery of an overall end product (e.g., evaluation, study, model).

(b) The Contracting Officer shall use the basic clause for cost type contracts for the services described in paragraph (a) of this section. The clause shall be used with its alternate for fixed-price type contracts for the services described in paragraph (a) of this section.

(c) The Contracting Officer may use such a clause in contracts with a total value of \$500,000 or less.

(d) The clause shall not be used in contracts for information technology services.

[71 FR 2437, Jan. 13, 2006]

Subpart 2442.15—Contractor Performance Information

SOURCE: 64 FR 46098, Aug. 23, 1999, unless otherwise noted.

2442.1502 Policy.

The Chief Procurement Officer is responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PART 2444—SUBCONTRACTING POLICIES AND PROCEDURES

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

2444.204

SOURCE: 81 FR 13752, Mar. 15, 2016, unless otherwise noted.

Subpart 2444.2—Contract Clauses

2444.204 Contract clauses.

(a) Insert HUDAR clause 2452.244-70 Consent to Subcontract, in contracts and task orders with an estimated value exceeding \$10,000,000.

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.

2446.502 Responsibility for acceptance.
2446.502-70 Contract clause.

Subpart 2446.7—Warranties

2446.710 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov. 17, 1988, unless otherwise noted.

Subpart 2446.5—Acceptance

2446.502 Responsibility for acceptance.

2446.502-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246-70, Inspection and Acceptance, in all solicitations and contracts.

[71 FR 2437, Jan. 13, 2006]

Subpart 2446.7—Warranties

2446.710 Contract clauses.

(c)(1) The contracting officer may include a clause substantially the same as FAR 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, whenever it is in the Government's interest.

[57 FR 59791, Dec. 15, 1992]

PART 2448—VALUE ENGINEERING

Subpart 2448.1—Policies and Procedures

Sec.

2448.102 Policies.
2448.103 Processing value engineering change proposals.

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2448.104-3 Sharing collateral savings.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 71 FR 2437, Jan. 13, 2006, unless otherwise noted.

2448.102 Policies.

(a) The authority of the agency head to exempt contracts from including Value Engineering (VE) procedures and processes under 48 CFR 48.102(a) is delegated to the HCA for individual (case-by-case) exemptions and to the Senior Procurement Executive for class exemptions.

(b) The Senior Procurement Executive is responsible for managing and monitoring HUD's VE efforts.

2448.103 Processing value engineering change proposals.

Upon receipt of a Value Engineering Change Proposal (VECP), the Contracting Officer shall promptly forward it to the program office responsible for the contract, indicating:

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the government's acceptance or rejection of the VECP, unless additional time is required for evaluation;

(c) The date by which the Contracting Officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed to evaluate the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor, if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, and government costs, that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in a contract modification accepting the VECP in whole or in part; and

(h) The need for additional funds, if acceptance of the VECP will result in an increase in the cost of contract performance.

Department of Housing and Urban Development

2451.7001

2448.104-3 Sharing collateral savings.

(a) The authority of the HCA to determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived under 48 CFR 48.104-3(a) is delegated to the Contracting Officer.

ensure the independent review of proposed termination settlements in excess of \$100,000.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

PART 2449—TERMINATION OF CONTRACTS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 64 FR 46098, Aug. 23, 1999, unless otherwise noted.

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2451.70—Contractor Use of Government Discount Travel Rates

Subpart 2449.1—General Principles

2451.7001 Contract clause.

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to

The Contracting Officer shall insert the clause at 48 CFR 2452.251-70, Contractor Employee Travel, in cost-reimbursement solicitations and contracts involving contractor travel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2452.201–70 Coordination of data collection activities.

Subpart 2452.2—Texts of Provisions and Clauses

Sec.

2452.203–70 Prohibition against the use of government employees.

2452.204–70 Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats).

2452.208–71 Reproduction of reports.

2452.209–70 Potential organizational conflicts of interest.

2452.209–71 Limitation on future contracts.

2452.209–72 Organizational conflicts of interest.

2452.215–70 Proposal content.

2452.215–71 Relative importance of technical evaluation factors to cost or price.

2452.215–72 Evaluation of small business participation.

2452.216–70 Estimated cost, base fee, and award fee.

2452.216–71 Award fee.

2452.216–72 Determination of award fee earned.

2452.216–73 Performance evaluation plan.

2452.216–74 Distribution of award fee.

2452.216–75 Unpriced task orders.

2452.216–76 Minimum and maximum quantities and amounts for order.

2452.216–77 Estimated quantities—requirements Contract.

2452.216–78 Ordering procedures.

2452.216–79 Estimated cost (no fee).

2452.216–80 Estimated cost and fixed-fee.

2452.219–70 Small, small disadvantaged, and women-owned small business subcontracting plan.

2452.219–71 Notification of competition limited to eligible 8(a) concerns—Alternate III to FAR 52.219–18.

2452.219–72 Section 8(a) direct awards (Deviation).

2452.219–73 Incorporation of subcontracting plan.

2452.219–74 Small business subcontracting goals.

2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

2452.227–70 Government information.

2452.232–70 Payment schedule and invoice submission (Fixed-price).

2452.232–71 Voucher submission (cost-reimbursement, time-and-materials, and labor-hour).

2452.232–72 Limitation of Government's obligation.

2452.232–73 Constructive acceptance period.

2452.232–74 Not to exceed limitation.

2452.233–70 Review of contracting officer protest decisions.

2452.237–70 Key personnel.

2452.237–73 Conduct of work and technical guidance.

2452.237–75 Access to HUD facilities.

2452.237–77 Temporary closure of HUD facilities.

2452.237–79 Post award conference.

2452.237–81 Labor categories, unit prices per hour and payment.

2452.239–70 Access to HUD systems.

2452.239–71 Information Technology Virus Security.

2452.242–70 Indirect costs.

2452.242–71 Contract management system.

2452.244–70 Consent to subcontract.

2452.246–70 Inspection and acceptance.

2452.251–70 Contractor employee travel.

Subpart 2452.3—Matrix

2452.3 Provision and clause matrix.

AUTHORITY: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

2452.201–70 Coordination of data collection activities.

As prescribed in 2401.106–70, insert the following clause in solicitations and contracts where the contractor is required to collect identical information from ten or more public respondents:

COORDINATION OF DATA COLLECTION ACTIVITIES (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501–3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated and amended at 77 FR 73537, Dec. 10, 2012]

Subpart 2452.2—Texts of Provisions and Clauses**2452.203-70 Prohibition against the use of government employees.**

As prescribed in 2403.670, insert the following clause in all solicitations and contracts:

PROHIBITION AGAINST THE USE OF
GOVERNMENT EMPLOYEES (FEB 2006)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to government employees or a business concern or other organization owned or substantially owned or controlled by one or more government employees. For the purposes of this contract, this prohibition against the use of government employees includes any work performed by the contractor or any of its employees, subcontractors, or consultants.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.204-70 Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats).

As prescribed in 2404.7001, insert the following clause:

PRESERVATION OF, AND ACCESS TO, CONTRACT
RECORDS (TANGIBLE AND ELECTRONICALLY
STORED INFORMATION (ESI) FORMATS) (DEC
2012)

(a) For the purposes of this clause—

Contract records means information created or maintained by the contractor in the performance of the contract. Contract records include documents required to be retained in accordance with FAR 4.703 and other information generated or maintained by the contractor that is pertinent to the contract and its performance including, but not limited to: email and attachments, formal and informal correspondence, calendars, notes, reports, memoranda, spreadsheets, tables, telephone logs, forms, survey, books, papers, photographs, drawings, machine-readable materials, and data. Contract records may be maintained as electronically stored information or as tangible materials. Contract records may exist in either final or any interim version (*e.g.*, drafts that have been circulated for official purposes and contain unique information, such as notes, edits, comments, or highlighting). Contract records may be located or stored on the contractor's premises or at off-site locations.

Electronically stored information (ESI) means any contract records that are stored on, or generated by, an electronic device, or contained in electronically accessible media, either owned by the contractor, subcontractor(s), or employees of the contractor or subcontractor(s) regardless of the physical location of the device or media (*e.g.*, offsite servers or data storage).

ESI devices and media include, but are not be limited to:

- (1) Computers (mainframe, desktop, and laptop);
- (2) Network servers, including shared and personal drives;
- (3) Individual email accounts of the contractor's principals, officers, and employees, including all folders contained in each email account such as "inbox," "outbox," "drafts," "sent," "trash," "archive," and any other folders;
- (4) Personal data assistants (PDAs);
- (5) External data storage devices including portable devices (*e.g.*, flash drive); and
- (6) Data storage media (magnetic, *e.g.*, tape; optical, *e.g.*, compact disc, microfilm, etc.).

Tangible materials means contract records that exist in a physical (*i.e.*, non-electronic) state.

(b) If during the period of performance of this contract, HUD becomes, or anticipates becoming, a party to any litigation concerning matters related to records maintained or generated by the Contractor in the performance of this contract, the Contracting Officer may provide the contractor with a written (either hardcopy or email) preservation hold notice and certification of compliance with the preservation hold notice. Upon receipt of the hold notice, the Contractor shall immediately take the following actions—

- (1) Discontinue any alteration, overwriting, deletion, or destruction of all tangible materials and ESI.
- (2) Preserve tangible materials and ESI. The contractor shall preserve ESI in its "native" form to preserve metadata (*i.e.*, creation and modification history of a document).
- (3) Identify all individuals who possess or may possess tangible materials and ESI related to this matter, including contractor employees, subcontractors, and subcontractor employees. The contractor shall provide the names of all such individuals via email to the HUD official indicated in the notice.
- (4) Document in writing the contractor's efforts to preserve tangible materials and ESI. It may be useful to maintain a log documenting preservation efforts.
- (5) Complete the certification of compliance with the preservation hold notice upon receipt and return it to the identified contact person; and

(6) Upon the request of the Contracting Officer, provide the Contracting Officer or other HUD official designated by the Contracting Officer with any of the information described in this clause. The contractor shall immediately confirm receipt of such request. The contractor shall describe in detail any records that the contractor knows or believes to be unavailable and provide a detailed explanation of why they are unavailable, and if known, their location.

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(2) The Contractor must assert its right to an adjustment under this clause within _____ [Contracting Officer insert period; 30 days if no other period inserted] from the date of receipt of the Contracting Officer's request made pursuant to paragraph (b)(6) of this clause. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a request submitted before final payment of the contract.

(3) Failure to agree to any adjustment shall be a dispute under the "Disputes" clause of this contract. However, nothing in this clause shall excuse the contractor from providing the records requested by the Contracting Officer.

(e) The Contractor shall include this clause in all subcontracts.

(End of clause)

Alterate I (DEC 2012) For cost-reimbursement type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one of the following and modify the contract accordingly—

- (i) Estimated cost;
- (ii) Delivery or completion schedule, or both; (ii) Amount of any fixed fee; or
- (iii) Other affected terms.

Alternate II (DEC 2012) For labor-hour or time-and-materials type contracts, substitute the following paragraph

(c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (i) Ceiling price;
- (ii) Hourly rates;
- (iii) Delivery schedule; or
- (iv) Other affected terms.

[77 FR 73532, Dec. 10, 2012]

2452.208-71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

REPRODUCTION OF REPORTS (APR 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated at 71 FR 2440, Jan. 13, 2006]

2452.209-70 Potential organizational conflicts of interest.

As prescribed in 2409.507-1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST (FEB 2000)

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

[65 FR 3577, Jan. 21, 2000]

2452.209-71 Limitation on future contracts.

As prescribed in 2409.507-2, the Contracting Officer may insert a clause

substantially the same as follows in solicitations and contracts for services:

LIMITATION ON FUTURE CONTRACTS (FEB 2000)

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

(d) Other restrictions—[*Contracting Officer insert description*].

(e) The restrictions imposed by this clause shall remain in effect until [*Contracting Officer insert period or date*].

(End of clause)

[65 FR 3577, Jan. 21, 2000]

2452.209-72 Organizational conflicts of interest.

As prescribed in 2409.508-2, insert the following contract clause in all contracts.

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

2452.215-70

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.215-70 Proposal content.

As prescribed in 2415.209(a), insert a provision substantially the same as the following:

PROPOSAL CONTENT (MAR 2016)

(a) Proposals shall be submitted in two parts as described in paragraphs (c) and (d) below. Each of the parts must be complete in itself so that evaluation of each part may be conducted independently, and so the identified parts of each proposal may be evaluated strictly on its own merit. Proposals shall be submitted in the format, if any, prescribed elsewhere in this solicitation. Proposals shall be enclosed in sealed packaging and addressed to the office specified in the solicitation. The offeror's name and address, the solicitation number and the date and time specified in the solicitation for proposal submission must appear in writing on the outside of the package.

(b) The number of proposals required is an original and [insert number] copies of Part I, and [insert number] copies of Part II.

(c) Part I—Technical Proposal. (1) The offeror shall submit the information required in Instructions to Offerors designated under Part I—Technical Proposal.

(d) Part II—Business Proposal. (1) The offeror shall complete the Representations and Certifications provided in Section K of this solicitation and include them in Part II, Business Proposal.

(2) The offeror shall provide information to support the offeror's proposed costs or prices as prescribed elsewhere in Instructions to Offerors for Part II—Business Proposal.

(3) The offeror shall submit any other information required in Instructions to Offerors designated under Part II—Business Proposal.

(End of provision)

Alternate I (MAR 2016) As prescribed in 2415.209(a), if the proposed contract requires work on, or access to, sensitive automated systems as described

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in 2452.239-70, add the following subparagraph, numbered sequentially, to paragraph (d):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause 2452.239-70 in Section I of this solicitation and include it in Part II, Business Proposal.

(End of provision)

Alternate II (MAR 2016) As prescribed in 2415.209(a), add the following paragraph (e) when the size of any proposal Part I or Part II will be limited:

(e) Size limits of Parts I and II. (1) Offerors shall limit submissions of Parts I and II of their initial proposals to the page limitations identified in the Instructions to Offerors. Offerors are cautioned that, if any Part of their proposal exceeds the stipulated limits for that Part, the Government will evaluate only the information contained in the pages up through the permitted number. Pages beyond that limit will not be evaluated.

(2) A page shall consist of one side of a single sheet of 8½" x 11" paper, single spaced, using not smaller than 12 point type font, and having margins at the top, bottom, and sides of the page of no less than one inch in width.

(3) Any exemptions from this limitation are stipulated under the Instructions to Offerors.

(4) Offerors are encouraged to use recycled paper and to use both sides of the paper (see the FAR clause at 52.204-4).

(End of provision)

[81 FR 13752, Mar. 15, 2016]

2452.215-71 Relative importance of technical evaluation factors to cost or price.

As prescribed in 2415.209(a)(2), insert the following provision:

RELATIVE IMPORTANCE OF TECHNICAL EVALUATION FACTORS TO COST OR PRICE (DEC 2012)

For the purposes of evaluating offers and the selection of the contractor or contractors under this solicitation, the relative merit of the offeror's technical proposal as evaluated in accordance with the technical evaluation factors listed herein shall be considered [Contracting Officer insert one of the following: "significantly more important than," "approximately equal to," or "significantly less important than"] cost or price. While the proposed cost or price will not be assigned a specific weight, it shall be

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considered a significant criterion in the overall evaluation of proposals.

[77 FR 73533, Dec. 10, 2012]

2452.215-72 Evaluation of small business participation.

As prescribed in 2415.370, insert the following provision:

EVALUATION OF SMALL BUSINESS PARTICIPATION (DEC 2012)

(a) In addition to the technical and management evaluation factors set forth in this solicitation, the Government will evaluate the extent to which all offerors identify and commit to using small businesses in the performance of the contract, whether through joint ventures or teaming arrangements, or as subcontractors. The evaluation shall consider the following:

- (1) The extent to which small businesses are specifically identified in proposals;
(2) The extent of commitment to use small businesses (for example, enforceable commitments will be weighted more heavily than non-enforceable ones);
(3) The complexity and variety of the work than small businesses are to perform;
(4) The realism of the proposal;
(5) Past performance of the offerors (other than small businesses) in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan; and
(6) The extent of participation of small businesses in terms of the total value of the contract.

(b) Offerors that are required to submit a subcontracting plan pursuant to the clause at FAR 52.219-9 shall include the small businesses proposed as subcontractors for evaluation under this provision in their subcontracting plan.

(End of provision)

[77 FR 73533, Dec. 10, 2012]

2452.216-70 Estimated cost, base fee and award fee.

As prescribed in 2416.406(e)(1), insert the following clause in all cost-plus-award-fee contracts:

ESTIMATED COST, BASE FEE AND AWARD FEE (FEB 2006)

- (a) The estimated cost of this contract is \$[insert amount].
(b) A base fee is payable in the amount of \$[insert amount]. The government will make payment of the base fee in [insert number] increments on the schedule set forth in the Performance Evaluation Plan established by

the government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(c) A maximum award fee available for payment is \$[insert amount]. The government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216-71 Award fee.

As prescribed in 2416.406(e)(2), insert the following clause in all fixed-price-award-fee contracts:

AWARD FEE (FEB 2006)

In addition to the fixed-price for this contract set forth in the Schedule, a maximum award fee of \$[insert amount] is available for payment. The government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216-72 Determination of award fee earned.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

DETERMINATION OF AWARD FEE EARNED (FEB 2006)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO's) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision will be made unilaterally by the government. In reaching this decision, the FDO may consider any justification of award fee the contractor submits, provided that the justification is submitted within [insert number] days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth

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the basis of the FDO's decision, and shall be sent to the contractor within *[insert number]* days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that any amount of fee not earned during the evaluation period may be accumulated and allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216-73 Performance evaluation plan.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

PERFORMANCE EVALUATION PLAN (AUG 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (*insert number*) days before the start of the first evaluation period.

(b) The Government may unilaterally change the award fee plan prior to the beginning of subsequent evaluation periods. The Contracting Officer will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 64 FR 46098, Aug. 23, 1999; 71 FR 2438, Jan. 13, 2006]

2452.216-74 Distribution of award fee.

As prescribed in 2416.406(e)(3), insert the following clause in all award fee contracts:

DISTRIBUTION OF AWARD FEE (FEB 2006)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period: *[insert time period]*

Available Award Fee: *[insert dollar amount]*

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-

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rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract.

(End of clause)

Alterate I (FEB 2006). As prescribed in 2416.406(e)(3), add paragraph (c):

(c) The contract clauses required for cost-reimbursement contracts shall be modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" shall be substituted for "fixed fee" where it appears in the clause at FAR 52.243-2, Changes—Cost Reimbursement.

(2) The term "base fee" shall be substituted for "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule" shall be substituted for the term "fee" whenever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.216-75 Unpriced task orders.

As prescribed in 2416.506-70(a), insert the following clause:

UNPRICED TASK ORDERS (FEB 2006)

(a) Prior to the issuance of a task order under this contract, it is anticipated that the government and the contractor will reach agreement on the price or total cost and fee (if applicable) for the services to be provided under the order. The Contracting Officer may authorize commencement of work prior to final agreement on cost or price. In such case, the contractor shall immediately commence performance of the services specified in the order and shall submit a pricing proposal within 15 days of receipt of the task order. Upon completion of negotiations, the final negotiated cost or price will be set forth in a supplemental agreement that is executed by the contractor and the Contracting Officer. Failure to agree upon the cost or price shall be considered a dispute subject to the Disputes clause of this contract.

(b) Unpriced task orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the task order. The task order shall only require the Contracting Officer's signature, but shall also

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comply with all other task order requirements. Unpriced task orders shall indicate the date by which the government anticipates that the cost or price of the order will be definitized.

(End of clause)

[71 FR 2439, Jan. 13, 2006]

2452.216-76 Minimum and maximum quantities or amounts for order.

As prescribed in 2416.506-70(b), insert the following clause:

MINIMUM AND MAXIMUM QUANTITIES OR AMOUNTS FOR ORDER (DEC 2012)

(a) The minimum quantity or amount to be ordered under this contract shall not be less than [contracting officer insert quantity or amount].

(b) The maximum quantity or amount to be ordered under this contract shall not exceed [contracting officer insert quantity or amount].

(End of clause)

[77 FR 73533, Dec. 10, 2012]

2452.216-77 Estimated quantities—requirements contract.

As prescribed in 2416.506-70(c), insert the following provision:

ESTIMATED QUANTITIES—REQUIREMENTS CONTRACT (FEB 2006)

In accordance with FAR 52.216-21(a), the government provides the following estimates:

The estimated quantity or amount of supplies or services the government may order during the ordering period of this contract is [insert description of item(s) or unit(s) and the estimated number of units or the dollar value].

The maximum quantity or amount of supplies or services the government may order during the ordering period of this contract is [insert description of item(s) or unit(s) and the estimated number of units or the dollar value].

(End of provision)

[71 FR 2439, Jan. 13, 2006]

2452.216-78 Ordering procedures.

As prescribed in 2416.506-70(d), insert the following provision:

ORDERING PROCEDURES (FEB 2006)

(a) Orders issued under this contract may be placed in writing or via [Contracting Officer to insert authorized ordering methods, e.g., telephone, facsimile (fax) machine, electronic mail (e-mail)].

(End of clause)

Alterate I (FEB 2006). As prescribed in 2416.506-70(d), add paragraph (b):

(b) In addition to the Contracting Officer, the following individuals are authorized to issue orders under this contract:

[Continue as necessary]

(End of clause)

Alterate II (FEB 2006). As prescribed in 2416.506-70(d), add paragraph (b):

(b) This contract provides for the issuance of task orders on a negotiated basis as follows:

(1) The Contracting Officer will provide the contractor(s) with a statement of work or task description. The contractor(s) shall provide pricing and other information requested by the Contracting Officer (e.g., proposed staffing, plan for completing the task, etc.) within the time period specified by the Contracting Officer. Failure by any contractor to provide all the requested information on time may result in the contractor not being considered or selected for issuance of the order.

(2) The Contracting Officer may require the contractor(s) to present and/or discuss (see (3) below) the proposed task order terms orally. The Contracting Officer will provide the contractor(s) with guidance on the format, location, and duration of any presentations.

(3) The Contracting Officer may discuss the proposed task order terms with the contractor(s) to ensure mutual understanding of the contractor(s)'s technical approach and/or costs or price and/or to reach mutually acceptable final terms for the task order. If more than one contractor is being considered for the task order, any discussions will be held individually with each contractor.

(4) The task order shall be executed by the contractor and the Contracting Officer.

(End of clause)

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2452.216-79 Estimated cost (no fee).

(End of clause)

As prescribed in 2416.307(b), insert the following clause:

ESTIMATED COST (NO FEE) (DEC 2012)

(a) It is estimated that the total reimbursable cost to the Government for full performance of this contract will be \$ ____ [Contracting Officer insert amount].

(b) If this contract is incrementally funded, the following shall apply:

(1) Total funds currently available for payment and allotted to this contract are \$ ____ [Contracting Officer insert amount] (see also the clause at FAR 52.232-22, "Limitation of Funds" herein).

(2) If and when the contract is fully funded, as specified in paragraph (a) of this clause, the clause at FAR 52.232-20, Limitation of Cost, herein, shall become applicable.

(3) The Contracting Officer may allot additional funds to the contract up to the total specified in paragraph (a) of this clause without the concurrence of the contractor.

(End of clause)

[77 FR 73533, Dec. 10, 2012]

2452.216-80 Estimated cost and fixed-fee.

As prescribed in 2416.307(b), insert the following clause:

ESTIMATED COST AND FIXED-FEE (DEC 2012)

(a) It is estimated that the total cost to the Government for full performance of this contract will be \$ ____ [Contracting Officer insert amount], of which \$ ____ [Contracting Officer insert amount] represents the estimated reimbursable costs, and \$ ____ [Contracting Officer insert amount] represents the fixed fee.

(b) If this contract is incrementally funded, the following shall apply:

(1) Total funds currently available for payment and allotted to this contract are \$ ____ [Contracting Officer insert amount], of which ____ [Contracting Officer insert amount] represents the limitation for reimbursable costs and \$ ____ [Contracting Officer insert amount] represents the prorated amount of the fixed fee (see also the clause at FAR 52.232-22, "Limitation of Funds" herein).

(2) If and when the contract is fully funded, as specified in paragraph (a) of this clause, the clause at FAR 52.232-20, "Limitation of Cost," herein, shall become applicable.

(3) The Contracting Officer may allot additional funds to the contract up to the total specified in paragraph (a) of this clause without the concurrence of the contractor.

[77 FR 73533, Dec. 10, 2012]

2452.219-70 Small business subcontracting plan compliance.

As prescribed in 2419.708(d), insert the following provision:

SMALL BUSINESS SUBCONTRACTING PLAN COMPLIANCE (FEB 2006)

(a) This provision is not applicable to small business concerns.

(b) Offerors' attention is directed to the provisions in this solicitation at FAR 52.219-8, Utilization of Small Business Concerns, and the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(c) The government will consider offerors' prior compliance with subcontracting plans in determining their responsibility (see FAR 9.104-3). Therefore, offerors having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and the applicable goals and actual performance (dollars and percentages) for subcontracting with the types of small business concerns listed in the clause at FAR 52.219-9. This information shall be provided for the three most recently completed contracts with such subcontracting plans.

(End of provision)

[71 FR 2439, Jan. 13, 2006]

2452.219-71 Notification of competition limited to eligible 8(a) concerns—Alternate III to FAR 52.219-18.

As prescribed in 2419.811-3(d)(3), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS—ALTERNATE III TO FAR 5219-18 (DEC 2012)

The following paragraph (c) replaces paragraph (c) of the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns:

(c) Any award resulting from this solicitation will be made directly by the HUD Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

[77 FR 73533, Dec. 10, 2012]

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2452.219-72 Section 8(a) direct awards (Deviation).

As prescribed in 2419.811-3(f), insert the following clause:

SECTION 8(A) DIRECT AWARD (DEC 2012)

(a) This contract is issued as a direct award between the Department of Housing and Urban Development (HUD) and the 8(a) Contractor pursuant to a Partnership Agreement (Agreement) between the Small Business Administration (SBA) and HUD. The SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by Contracting Officer at time of award].

(b) SBA is the prime contractor and [insert name of 8(a) contractor] is the subcontractor under this contract. Under the terms of the Agreement, HUD is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the HUD Contracting Officer shall give advance notice to the SBA before issuing a final notice terminating performance, either in whole or in part, under the contract. The HUD Contracting Officer shall also coordinate with SBA prior to processing any novation agreement. HUD may assign contract administration functions to a contract administration office.

(c) [insert name of 8(a) contractor] agrees:

(1) To notify the HUD Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.

(2) To adhere to the requirements of FAR 52.219-14, "Limitations on Subcontracting."

(End of Clause)

[77 FR 73534, Dec. 10, 2012]

2452.219-73 Incorporation of subcontracting plan.

As prescribed in 2419.708(b), insert the following clause:

INCORPORATION OF SUBCONTRACTING PLAN (DEC 2012)

The Contractor's approved subcontracting plan, dated [Contracting Officer insert

date] is hereby incorporated by reference and made a part of this contract.

(End of clause)

[77 FR 73534, Dec. 10, 2012]

2452.219-74 Small business subcontracting goals.

As prescribed in 2419.708(b), insert the following provision:

SMALL BUSINESS SUBCONTRACTING GOALS (DEC 2012)

(a) This provision does not apply to offerors that are small businesses.

(b) The offeror's attention is directed to the FAR clause at 52.219-9, "Small Business Subcontracting Plan," herein. HUD will evaluate proposed subcontracting plans using the Departmental small business subcontracting goals set forth in paragraph (c) of this clause. Offerors that are unable to propose subcontracting that meets HUD's established goals must provide the rationale for their proposed level of subcontracting.

(c) HUD's subcontracting goals are as follows:

(i) Small Business—% [Contracting Officer insert HUD small business subcontracting goal percentage]

(ii) The total Small Business goal shown in paragraph (c)(i) of this clause contains the following subordinate goals [Contracting Officer insert percentages]:

- (A) Small Disadvantaged Business—%
(B) Women-Owned Small Business—%
(C) Service-Disabled Veteran-Owned Small Business—%
(D) HUBZone Small Business—%

(End of provision)

[77 FR 73534, Dec. 10, 2012]

2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (FEB 2006)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract meets all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and any implementing regulations of the Department. The contractor shall be responsible for ascertaining the specific accessibility needs

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(e.g., sign language interpreters) for each meeting, conference, or seminar in light of the known or anticipated attendees.

(End of clause)

[71 FR 2440, Jan. 13, 2006]

2452.227-70 Government information.

As prescribed in 2427.470, use the following clause:

GOVERNMENT INFORMATION (DEC 2012)

(a) *Definitions.* As used in this clause, "Government information" includes—

Contractor-acquired information, which means information acquired or otherwise collected by the Contractor on behalf of the Government in the context of the Contractor's duties under the contract.

Government-furnished information (GFI), which means information in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. GFI also includes contractor-acquired information if the contractor-acquired information is a deliverable under the contract and is for continued use under the contract. Otherwise, GFI does not include information that is created by the Contractor and delivered to the Government in accordance with the requirements of the work statement or specifications of the contract. The type, quantity, quality, and delivery requirements of such deliverable information are set forth elsewhere in the contract schedule.

(b) *Information Management and Information Security.*

(1) The Contractor shall manage, account for, and secure all Government information provided or acquired by the contractor. The Contractor shall be responsible for all Government information provided to its subcontractors. The Contractor agrees to include a requirement in each subcontract under this contract that flows down the protection from disclosure requirements.

(2) The Contractor's responsibility for Government information extends from the initial provision or acquisition and receipt of information, through stewardship, custody, and use until returned to, or otherwise disposed of, as directed by the Contracting Officer. This requirement applies to all Government information under the Contractor's accountability, stewardship, possession or control, including its subcontractors.

(c) *Use of Government information.* (1) The Contractor shall not use any information provided or acquired under this contract for any purpose other than in the performance of this contract.

(2) The Contractor shall not modify or alter the Government information, unless

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authorized in writing, in advance, by the Contracting Officer.

(d) *Government-furnished information.* (1) The Government shall deliver to the Contractor the information described below—

Description Date to be Provided
[Contracting Officer insert]

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished information will be suitable for contract performance and will be delivered to the Contractor by the dates stated in paragraph (d)(1) of this clause.

(i) The Government does not warrant the validity or accuracy of the Government-furnished information unless otherwise noted.

(ii) In the event that information received by the Contractor is not in a condition suitable for its intended use, the Contractor shall immediately notify the Contracting Officer in writing. Upon receipt of the Contractor's notification, the Contracting Officer shall advise the Contractor on a course of action to remedy the problem.

(iii) If either the failure of the Government to provide information to the Contractor by the dates shown in this clause or the remedial action taken under this clause to correct defective information causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, the Contracting Officer shall consider an equitable adjustment to the contract. The Contractor shall provide to the Contracting Officer its written statement describing the general nature and amount of the equitable adjustment proposal within 30 days after the remedial action described in paragraph (ii) herein is completed, or within 30 days after the date upon which the Government failed to provide information, unless the Contracting Officer extends this period.

(3)(i) The Contracting Officer may, by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished information under this contract;

(B) Substitute other Government-furnished information for the information previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use the information.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Rights in information.* Government information is the property of the U.S. Government unless otherwise specifically identified. The specific rights in any other information acquired or created by the Contractor under

this contract shall be as expressed in the "Rights in Data" clause contained in this contract.

(f) *Government access to information.* The Government shall have the right to access any Government information maintained by the contractor and any subcontractors. The Contractor shall provide the Contracting Officer, and other duly authorized Government representatives, with access to all Government information, including access to the Contractor's facilities, as necessary, promptly upon written notification by the Contracting Officer. Such notification may be by electronic mail.

(g) *Contractor liability for Government information.* (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage, or destruction to the Government information furnished or acquired under this contract, except when the loss, theft, damage, or destruction is the result of the Contractor's failure to properly manage, account for, and safeguard the information in accordance with this clause.

(2) In the event of any loss, theft, damage, or destruction of Government information, the Contractor shall immediately take all reasonable actions necessary to protect the Government information from further loss, theft, damage, or destruction.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage, or destruction of Government information.

(h) *Information alteration and disposal.* Except as otherwise provided for in this contract, the Contractor shall not alter, destroy, or otherwise dispose of any Government information unless expressly directed by the Contracting Officer to do so.

(i) *Return of Government information to the Government.* (1) The Government may require the Contractor to return Government Information to the Government at any time. Upon demand by the Contracting Officer or his/her representative, the Contractor shall return all Government information to the Government as directed by the Contracting Officer or other individual designated by the Contracting Officer.

(2) The Contractor's failure to return all information as directed, including directions regarding the time frames for delivery back to the Government and directions prescribing the form in which the data must be returned, shall be considered a breach of contract, and the Government shall have the right to physically remove the Government information from the Contractor, including removal of such information from the Contractor's physical premises and from any electronic media (e.g., Contractor's computer systems).

(3) When required to return Government information to the Government, the Con-

tractor shall do so at no cost to the Government. The Government shall not be responsible for the cost of data format conversion and the cost of delivery, if any.

(4) The Contractor shall ensure that all Government information provided to subcontractors is returned to the Government.

(j) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished information.

(2) Delivery of Government-furnished information in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished information.

(4) Failure to correct or replace Government information for which the Government is responsible.

(k) *Subcontracts.* The Contractor shall ensure that all subcontracts under which Government information is provided to a subcontractor include the basic terms and conditions set forth in paragraphs (a), (b), (c), (f), and (h) of this clause in each subcontract. Subcontracts shall clearly describe the Government information provided to the subcontractor. The Contractor shall be responsible for all Government information provided to subcontractors.

Alterate I. When the contracting officer determines that the failure to return Government information as provided for in paragraph (i) of this clause shall result in a monetary damage to the Government, the contracting officer shall include the following additional paragraph (i)(5) of this clause. The contracting officer shall consult the requiring activity to determine an amount or percentage that accurately reflects the damages to the Government.

(5) In the event of Contractor delay in returning the Government Information to the Government, for each calendar day late, the Contracting Officer has the discretion to deduct _____ [*Contracting Officer insert dollar amount or percentage*] from the total value of the contract, and/or withhold payment from the Contractor.

(End of clause)

[77 FR 73534, Dec. 10, 2012]

2452.232-70 Payment schedule and invoice submission (Fixed-Price).

As prescribed in HUDAR Section 2432.908(c)(2), insert the following clause in all fixed price solicitations and contracts where invoicing and payments will NOT be made through the

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Department of Treasury’s Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

paid through the Department of Treasury’s Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (MAR 2016)

(a) *Payment schedule.* Payment of the contract price (see Section B of the contract) will be made upon completion and acceptance of all work unless a partial payment schedule is included below.

[Contracting Officer insert schedule information]:

Partial payment number	Applicable contract deliverable	Delivery date	Payment amount
1. [.]			
2. [.]			
3. [.]			

[Continue as necessary]

(b) *Submission of invoices.* (1) The Contractor shall submit invoices as follows: original to the payment office and one copy each to the Contracting Officer and a copy to the Government Technical Representative (GTR) identified in the contract. To constitute a proper invoice, the invoice must include all items required by the FAR clause at 52.232-25, “Prompt Payment.”

(2) To assist the government in making timely payments, the contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., block 14 of the Standard Form (SF) 26, block 21 of the SF-33, or block 25 of the SF-1449). The contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(c) *Contractor remittance information.* The contractor shall provide the payment office with all information required by other payment clauses or other supplemental information (e.g., contracts for commercial services) contained in this contract.

(d) *Final invoice payment.* The final invoice will not be paid prior to certification by the Contracting Officer that all work has been completed and accepted.

(End of clause)

Alternate I (MAR 2016) As prescribed in HUDAR section 2432.908(c)(2), replace paragraph (b)(1) and (b)(2) with the following Alternate I paragraphs to HUDAR Clause 2452.232-70 Payment Schedule and Invoice Submission (Fixed-price) for fixed price solicitations and contracts other than performance-based under which performance-based payments will be used and where invoices are to be submitted electronically by email but will not be

(b) *Submission of invoices.* (1) The contractor shall submit invoices electronically via email to the email addresses shown on the contract award document (e.g., block 12 of the Standard Form (SF) 26, block 25 of the SF-33, or block 18a of the SF-1449) and carbon copy the Contracting Officer and the Government Technical Representative (GTR). To constitute a proper invoice, the invoice must include all items required by the FAR clause at 52.232-25, “Prompt Payment.” The contractor shall clearly include in the Subject line of the email: INVOICE INCLUDED; CONTRACT/ORDER #: _____, INVOICE NUMBER _____ and Contract Line Item Number(s) _____.

(2) To assist the government in making timely payments, the contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., block 14 of the Standard Form (SF) 26, block 21 of the SF-33, or block 25 of the SF-1449).

(End of Alternate I)

Alternate II (MAR 2016) As prescribed in HUDAR Section 2432.908(c)(2), replace paragraphs (b)(1) and (2) of the HUDAR Clause 2452.232-70 Payment Schedule and Invoice Submission (Fixed-price) with the following Alternate II language in all fixed price solicitations and contracts when requiring invoices to be submitted electronically to the Department of Treasury’s Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

(b) *Submission of invoices.* (1) The Contractor shall obtain access and submit invoices to the Department of Treasury Bureau of Fiscal Services’ Invoice Platform Processing System via the Web at URL: <https://arc.publicdebt.treas.gov/ipp/fsippqrg.htm> in accordance with the instructions on the Web site. To constitute a proper invoice, the invoice must include all items required by the FAR clause at 52.232-25, “Prompt Payment.”

(2) To assist the government in making timely payments, the contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., block 14 of the Standard Form (SF) 26, block 21 of the SF-33, or block 25 of the SF-1449).

(End of Alternate II)

[81 FR 13753, Mar. 15, 2016]

2452.232-71 Voucher submission (cost-reimbursement, time-and-materials, and labor-hour).

As prescribed in HUDAR Section 2432.908(c)(3), insert the following clause in all cost reimbursable, time-and-materials, and labor-hour solicitations and contracts where vouchering and payments will NOT be made through the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

VOUCHER SUBMISSION (COST-REIMBURSEMENT, TIME-AND-MATERIALS, AND LABOR HOUR) (MAR 2016)

(a) *Voucher submission.* (1) The contractor shall submit, _____ [Contracting Officer insert billing period, *e.g.*, monthly], an original and two copies of each voucher. In addition to the items required by the clause at FAR 52.232-25, Prompt Payment, the voucher shall show the elements of cost for the billing period and the cumulative costs to date. The Contractor shall submit all vouchers, except for the final voucher, as follows: original to the payment office and one copy each to the Contracting Officer and the Government Technical Representative (GTR) identified in the contract. The contractor shall submit all copies of the final voucher to the Contracting Officer.

(2) To assist the government in making timely payments, the contractor is requested to include on each voucher the applicable appropriation number(s) shown on the award or subsequent modification document (*e.g.*, block 14 of the Standard Form (SF) 26, or block 21 of the SF-33). The contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor remittance information.* (1) The Contractor shall provide the payment office with all information required by other payment clauses contained in this contract.

(2) For time-and-materials and labor-hour contracts, the Contractor shall aggregate vouchered costs by the individual task for which the costs were incurred and clearly identify the task or job.

(c) *Final Payment.* The final payment shall not be made until the Contracting Officer has certified that the contractor has complied with all terms of the contract.

(End of clause)

Alternate I (MAR 2016). As prescribed in HUDAR section 2432.908(c)(3), replace paragraphs (a)(1) and (2) with the following Alternate I paragraphs to HUDAR Clause 2452.232-71, Voucher Submission in time and material, cost-reimbursable and labor hour sollicita-

tions and contracts other than performance-based under which performance-based payments will be used and where invoices are to be submitted electronically by email but will not be paid through the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

(a) *Voucher submission.* (1) The contractor shall submit vouchers electronically via email to the email addresses shown on the contract award document (*e.g.*, block 12 of the Standard Form (SF) 26, block 25 of the SF-33, or block 18a of the SF-1449) and carbon copy the Contracting Officer and the Government Technical Representative (GTR). In addition to the items required by the clause at FAR 52.232- 25, Prompt Payment, the voucher shall show the elements of cost for the billing period and the cumulative costs to date. The contractor shall clearly include in the Subject line of the email: VOUCHER INCLUDED; CONTRACT/ORDER #: _____, VOUCHER NUMBER _____ and Contract Line Item Number(s) _____.

(2) To assist the government in making timely payments, the contractor is requested to include on each voucher the applicable appropriation number(s) shown on the award or subsequent modification document (*e.g.*, block 14 of the Standard Form (SF) 26, or block 21 of the SF-33)

(End of Alternate I)

Alternate II (MAR 2016). As prescribed in HUDAR section 2432.908(c)(3), replace paragraphs (a)(1) and (2) of the HUDAR Clause 2452.232-71 Voucher Submission with the following Alternate II language in all cost-reimbursement, time-and-materials, and labor-hour type solicitations and contracts when requiring vouchers to be submitted electronically to the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

(a) *Voucher submission.* (1) The Contractor shall obtain access and submit invoices to the Department of Treasury Bureau of Fiscal Services' Invoice Platform Processing System via the Web at URL: <https://arc.publicdebt.treas.gov/app/fsippqrg.htm> in accordance with the instructions on the Web site. To constitute a proper voucher, in addition to the items required by the clause at FAR 52.232-25, Prompt Payment, the voucher shall show the elements of cost for the billing period and the cumulative costs to date.

(2) To assist the government in making timely payments, the contractor is requested to include on each voucher the applicable appropriation number(s) shown on the award or

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subsequent modification document (*e.g.*, block 14 of the Standard Form (SF) 26, or block 21 of the SF-33).

(End of Alternate II)

[81 FR 13753, Mar. 15, 2016]

2452.232-72 Limitation of Government's obligation.

As prescribed in 2432.705-70, use the following clause:

Contract line item number	Total price	Amount of current funding	Anticipated date(s) of future funding

The contracting officer will revise this table as funds are allotted to the contract.

(b) For the incrementally funded line item(s) in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract for these contract line items. The Contractor is not authorized to continue work on the incrementally funded line item(s) beyond that point. The Government will in no event be obligated to reimburse the Contractor in excess of the amount allotted to the contract for the incrementally funded line item(s) regardless of anything to the contrary in the clause entitled "*Termination for Convenience of the Government.*" As used in this clause, the total amount payable by the Government in the event of termination for convenience of applicable line item(s) includes costs, profit, and estimated termination settlement costs for those line item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (a) of this clause, the Contractor will notify the Contracting Officer in writing at least _____ [90 days unless the Contracting Officer inserts a different number] days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for per-

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LIMITATION OF GOVERNMENT'S OBLIGATION (DEC 2012)

(a) Funds are not available for full funding of all contract line items under this contract. The incrementally funded line items and their anticipated funding schedule are as follows:

formance of the applicable line item(s). This notification will state: the estimated date when that point will be reached; and an estimate of the amount of additional funding, if any, needed to continue performance of the applicable line items up to the next scheduled date for allotment of funds identified in paragraph (a) of this clause (or to another mutually agreed-upon date). The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the line item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (a) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed-upon date, the Contracting Officer will terminate any line item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "*Termination for Convenience of the Government.*"

(d) When additional funds are allotted for continued performance of the incrementally funded line item(s), the parties will agree to the period of contract performance covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed-upon date(s), and the contract will be modified accordingly.

(e) If the Contractor incurs additional costs or is delayed in the performance of the work under this contract solely by reason of

the failure of the Government to allot additional funds in amounts sufficient for timely performance of the incrementally funded line item(s), and then additional funds are allotted, an equitable adjustment will be made in the line item price(s) or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder shall be considered a dispute subject to the "Disputes" clause in this contract.

(f) The Government may allot additional funds for the performance of the incrementally-funded line item(s) at any time prior to termination.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the incrementally funded line item(s) and will no longer apply once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(End of clause)

[77 FR 73536, Dec. 10, 2012]

2452.232-73 Constructive acceptance period.

As prescribed in 2432.908, insert the following clause:

CONSTRUCTIVE ACCEPTANCE PERIOD (DEC 2012)

As authorized by FAR 32.908(c)(1), the constructive acceptance period in paragraph (a)(5)(i) of the clause at FAR 52.232-25, "Prompt Payment," under this contract is ___ [Contracting Officer insert number] calendar days.

(End of clause)

[77 FR 73537, Dec. 10, 2012]

2452.232-74 Not to exceed limitation.

As prescribed in 2432.705(b), insert the following clause in all solicitations and contracts where the total estimated funds needed for the performance of the contract are not yet obligated.

NOT TO EXCEED LIMITATION (MAR 2016)

(a) The total estimated funds needed for the performance of this contract are not yet obligated. The total obligation of funds available at this time for performance of work or deliveries is [insert amount]. The Government shall not order, nor shall the contractor be authorized or required to accept orders for, or perform work on such orders (or perform any other work on this contract) or make deliveries that exceed the stated funding limit.

(b) When funding is available, the Government may unilaterally increase the amount obligated through contract funding modification(s) until the full contract value has been obligated. If a contract funding modification is not in place by the time the performance of the work or deliveries have reached the stated funding limit, the contractor must stop performing services and deliveries and may not start again until the contractor is notified through a contract funding modification that funds are available to continue services and deliveries.

(End of clause)

[81 FR 13754, Mar. 15, 2016]

2452.233-70 Review of contracting officer protest decisions.

As prescribed in 2433.106, insert the following provision:

REVIEW OF CONTRACTING OFFICER PROTEST DECISIONS (FEB 2006)

(a) In accordance with FAR 33.103 and HUDAR 2433.103, a protester may request an appeal of the Contracting Officer's decision concerning a protest initially made by the protester to the Contracting Officer. The protestor must submit a written request for an appeal to [insert name of HCA and address] not later than 10 days after the protestor's receipt of the Contracting Officer's decision (see FAR 33.101 for the definition of "days").

(b) The HCA shall make an independent review of the Contracting Officer's decision and provide the protester with the HCA's decision on the appeal.

(End of provision)

[71 FR 2440, Jan. 13, 2006]

2452.237-70 Key personnel.

As prescribed in 2437.110(e)(1), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the contractor's key personnel:

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KEY PERSONNEL (FEB 2006)

(a) *Definition.* "Personnel" means employees of the contractor, or any subcontractor(s), affiliates, joint venture partners, or team members, and consultants engaged by any of those entities.

(b) The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the Contracting Officer. Key personnel shall perform as follows: [*List Key Personnel and/or positions, and tasks, percentage of effort, number of hours, etc., for which they are responsible, as applicable.*]

(End of clause)

[71 FR 2440, Jan. 13, 2006, as amended at 77 FR 73537, Dec. 10, 2012]

2452.237-73 Conduct of work and technical guidance.

As prescribed in 2437.110(e)(2), insert the following clause in all contracts for services:

CONDUCT OF WORK AND TECHNICAL GUIDANCE
(MAR 2016)

(a) The Contracting Officer will provide the contractor with the name and contact information of the Government Technical Representative (GTR) assigned to this contract. The GTR will serve as the contractor's liaison with the Contracting Officer with regard to the conduct of work. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(b) The GTR for liaison with the contractor as to the conduct of work is [to be inserted at time of award] or a successor designated by the Contracting Officer. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(c) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

- (1) Causes the contractor to perform work outside the statement of work or specifications of the contract;
- (2) Constitutes a change as defined in FAR 52.243 1;
- (3) Causes an increase or decrease in the cost of the contract;

(4) Alters the period of performance or delivery dates; or

(5) Changes any of the other express terms or conditions of the contract.

(d) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone, facsimile (fax), or electronic mail.

(e) Other specific limitations [to be inserted by Contracting Officer]:

(f) The contractor shall promptly notify the Contracting Officer whenever the contractor believes that guidance provided by any government personnel, whether or not specifically provided pursuant to this clause, is of a nature described in paragraph (b) above.

(End of clause)

[81 FR 13754, Mar. 15, 2016]

2452.237-75 Access to HUD Facilities.

As prescribed in 2437.110(e)(3), insert the following clause in solicitations and contracts:

ACCESS TO HUD FACILITIES (DEC 2012)

(a) *Definitions.* As used in this clause—

Access means physical entry into and, to the extent authorized, mobility within a Government facility.

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 also includes consultants engaged by any of those entities.

Facility and *Government facility* mean buildings, including areas within buildings that are owned, leased, shared, occupied, or otherwise controlled by the Federal Government.

NACI means National Agency Check with Inquiries, the minimum background investigation prescribed by the U.S. Office of Personnel Management.

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

(b) *General.* The performance of this contract requires contractor employees to have access to HUD facilities. 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 facility 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 a HUD facility without a proper PIV Card.

(c) *Background information.* (1) For each contractor employee subject to the requirements of this clause and not in possession of a current PIV Card acceptable to HUD, 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). The SF-85 and OF-306 are available from the OPM Web site, <http://www.opm.gov>. The GTR will provide all other forms that are not obtainable via the Internet.

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

(3) The information provided in accordance with paragraph (c)(1) of this clause will be used to perform a background investigation to determine the suitability of the contractor employees to have access to Government facilities. After completion of the investigation, the GTR will notify the contractor in writing when any contractor employee is determined to be unsuitable for access to a Government facility. The contractor shall immediately remove such employee(s) from work on this contract that requires physical presence in a Government facility.

(4) 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 information in lieu of the forms and information listed in paragraph (c)(1) of this clause: Employee's full name, Social Security Number, and place and date of birth.

(d) *PIV Cards.* (1) HUD will issue a PIV Card to each contractor employee who is to be given access to HUD facilities and who 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 the 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 (c)(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., employee terminates employment with the contractor, employee's duties no longer require access to HUD facilities). 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.

(e) *Control of access.* HUD shall have, and exercise, complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. 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 facility. The contractor shall immediately notify such employee that he/she no longer has access to any HUD facility, remove the employee from any such facility that he/she may be in, and 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]

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2452.237-77 Temporary closure of HUD facilities.

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

Temporary Closure of HUD Facilities (MAR 2016)

(a)(1) The Department of Housing and Urban Development observes the following days as holidays—

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 the number of business days in each 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)

[64 FR 46100, Aug. 23, 1999, as amended at 71 FR 2441, Jan. 13, 2006; 77 FR 73538, Dec. 10, 2012; 81 FR 13754, Mar. 15, 2016]

2452.237-79 Post award conference.

As prescribed in 2437.110(e)(5), insert the following clause in all contracts for services:

Post Award Conference (MAR 2016)

The Contractor shall be required to attend a post-award conference on DATE _____ to be held at ADDRESS _____, unless other arrangements are made. All Contractors must have a valid ID for security clearance into the building.

(End of clause)

Alternate I Post Award Conference (MAR 2016) If the conference will be conducted via telephone or video conferencing, substitute the following for the first and second sentences:

The conference will be conducted via [telephone, video conferencing]. The Contracting Officer or designee will provide the contractor with the date, time and contact information for the conference.

(End of Alternate I)

[81 FR 13754, Mar. 15, 2016]

2452.237-81 Labor categories, unit prices per hour and payment.

As prescribed in 2437.110(e)(6), insert the following clause in all indefinite

quantity and requirements solicitations and contracts when level of effort task orders will be issued.

LABOR CATEGORIES, UNIT PRICES PER HOUR
AND PAYMENT (MAR 2016)

The contractor shall provide the following types of labor at the corresponding unit price per hour in accordance with the terms of this contract:

The unit price per hour is inclusive of the hourly wage plus any applicable labor overhead, General and Administrative (G&A) expenses, and profit. Payment shall be made to the contractor upon delivery to, and acceptance by, the Government office requesting services. The total amounts billed shall be derived by multiplying the actual number of hours worked per category by the corresponding price per hour.

(End of clause)

[81 FR 13754, Mar. 15, 2016]

2452.239-70 Access to HUD systems.

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

ACCESS TO HUD SYSTEMS (MAR 2016)

(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 also includes 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 unauthor-

ized access to, or modification of, could adversely affect the national interest, the conduct of federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

“System” means an interconnected set of information resources under the same direct management control, which shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people (see OMB Circular A-130). System includes any system owned by HUD or owned and operated on HUD’s behalf by another party.

(b) *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 applications(s).

(c) *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.

(d) *Background investigation process.* (1) The Government Technical Representative (GTR)

shall notify the contractor of those contractor employee positions requiring background investigations.

(i) For each contractor employee requiring access to HUD information systems, 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).

(ii) For each contractor employee requiring access to mission-critical systems and/or sensitive information contained within a HUD system and/or application(s), the contractor shall submit the following properly completed forms: SF-85P, "Questionnaire for Public Trust Positions;" FD 258; and a Fair Credit Reporting Act form (authorization for the credit-check portion of the investigation). Contractor employees shall not complete the Medical Release behind the SF-85P.

(iii) The SF-85, 85P, and OF-306 are available from OPM's Web site, <http://www.opm.gov>. The GTR will provide all other forms that are not obtainable via the Internet.

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

(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 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 any 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 system(s) 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;

(ii) OMB Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

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

(iv) HUD Handbook 732.3, 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.

(2) The contractor shall develop and maintain a compliance matrix that lists each requirement set forth in paragraphs (b) through (h), (i)(1), and (m) of this clause with specific actions taken, and/or procedures implemented, to satisfy each requirement. The contractor shall identify an accountable person for each requirement, the date upon which actions/procedures were initiated/completed, and certify that information contained in this compliance matrix is correct. The contractor shall ensure that information in this compliance matrix is complete, accurate, and up-to-date at all times for the duration of this contract. Upon request, the contractor shall provide copies of the current matrix to the Contracting Officer and/or government technical representative.

(3) The Contractor shall ensure that its employees, in performance of the contract, receive annual training (or once if the contract is for less than one year) in HUD information technology security policies, procedures, computer ethics, and best practices in accordance with HUD Handbook 2400.25.

(j) *Access to contractor's systems.* The Contractor shall afford authorized personnel, including the Office of Inspector General, access to the Contractor's facilities, installations, operations, documentation (including the compliance matrix required under paragraph (i)(2) of this clause), databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out, but not limited to, any information security program activities, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of HUD data and systems, or to the function of information systems operated on behalf of HUD, and to preserve evidence of computer crime.

(k) *Contractor compliance with this clause.* 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) shall also comply with the requirements of HUDAR clause 2452.237-75 when the

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contractor's or subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

(m) *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)

[81 FR 13755, Mar. 15, 2016]

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.”

Period	Category	Provisional rate	Ceiling rate	Base
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Effective date until amended:

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period

(End of clause)

2452.242-71 Contract management system.

As prescribed in 2442.1107, insert the following clause:

CONTRACT MANAGEMENT SYSTEM (FEB 2006)

(a) The contractor shall use contract management baseline planning and progress reporting as described herein.

(b) The contract management system shall consist of two parts:

(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 computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not limit the rights of the government under any other clause of this contract.

(End of clause)

[65 FR 3577, Jan. 21, 2000, as amended at 71 FR 2441, Jan. 13, 2006]

2452.242-70 Indirect costs.

As prescribed in 2442.705-70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

INDIRECT COSTS (APR 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, “Allowable Cost and Payment” the rates listed below are established. If the column entitled, “Ceiling Rate” has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

(1) *Baseline plan.* The baseline plan shall consist of:

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the contract schedule, including the period of time needed to accomplish each task and activity (see paragraph (ii)(B) of this section below);

(C) Describes staff (e.g., hours per individual), financial, and other resources allocated to each task and significant activity; and,

(D) Provides the rationale for contract work organization and resource allocation.

(ii) A graphic portion showing:

(A) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract (i.e., the budgeted baseline); and

(B) The planned start and completion dates of all planned and budgeted tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and

(B) Identifies problems, or potential problems, that will affect the contract's cost or schedule, the causes of the problems, and the contractor's proposed corrective actions.

(ii) A graphic portion showing:

(A) The original time-phased, budgeted baseline.

(B) The schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan; and

(C) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected costs required to complete the work under the contract.

(3) *Reporting frequency.* The reports described in (b)(2) shall be submitted [*insert period, e.g., monthly, quarterly, or schedule based on when payments will be made under the contract*].

(c) The formats, forms, and/or software to be used for the contract management system under this contract shall be [*Contracting Officer insert appropriate language "as prescribed in the schedule;" "a format, forms and/or software designated by the GTR;" or, "the contractor's own format, forms and/or software, subject to the approval of the GTR."*].

(d) When this clause applies to individual task orders under the contract, the word "contract" shall mean "task order."

(End of clause)

Alternate I (FEB 2006). As prescribed in 2442.1107, replace paragraph (b) with the following:

(b) The contract management system shall consist of two parts:

(1) *Baseline plan.* The baseline plan shall consist of:

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the contract work schedule, including the period of time needed to accomplish each task and activity (see paragraph (ii) of this section below);

(C) Describes key personnel allocated to each task and significant activity; and,

(D) Provides the rationale for contract work organization.

(ii) A graphic portion showing the planned start and completion dates of all planned tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made for each task during the reporting period; and

(B) Identifies problems, or potential problems, that will affect the contract's cost or schedule, their causes, and the contractor's proposed corrective actions.

(ii) A graphic portion showing the schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan.

(3) *Reporting frequency.* The reports described in (b)(2) shall be submitted [*insert period, e.g., monthly, quarterly, or schedule*].

(End of clause)

[71 FR 2441, Jan. 13, 2006]

2452.244-70 Consent to subcontract.

As prescribed in HUDAR Section 2444.204(a), insert the following clause in contracts and task orders with an estimated value exceeding \$10,000,000.

Consent to Subcontract (Mar 2016)

(a) Due to the substantive nature of subcontracting that may be necessary during performance of this contract, the Contracting Officer has determined that a consent for individual subcontracts is required to adequately protect the Government. Consent is required for -

(1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts, or combination of such, in excess of \$150,000 per year to a single subcontractor or consultant;

(2) Fixed price subcontracts in excess of 25% of the annual contract value to a single subcontractor or consultant.

(b) If subcontracts meeting the above parameters were not provided during the negotiation of the original contract award, the

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Contractor shall obtain post award consent and provide signed copies of the subcontract agreements within 10 days of consent.

(c) The Contractor shall provide the Contracting Officer with 30 days advance notification prior to changing subcontractors or existing subcontracting agreements, unless precluded due to circumstances beyond the control of the contractor. If advance notification is not feasible, the Contractor shall provide notification to the Contracting Officer no later than 10 days after the Contractor identifies the need to replace a subcontractor. The notification shall include a copy of the proposed new subcontracting agreement. Upon consent and finalization of the final subcontract agreement, the Contractor shall provide a copy of the signed agreement to the Contracting Officer.

(d) The Contracting Officer's consent to a subcontract does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs.

(e) If not required elsewhere in the contract, no more than 30 calendar days after award, the Contractor shall provide a separate continuity of services plan to the Contracting Officer that will ensure services performed by subcontractors that cost more than 25% of the cost/price of the contract will continue uninterrupted in the event of performance problems or default by the subcontractor.

(End of clause)

[81 FR 13756, Mar. 15, 2016]

2452.246-70 Inspection and acceptance.

As prescribed in 2446.502-70, insert the following clause in all solicitations and contracts:

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INSPECTION AND ACCEPTANCE (FEB 2006)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) or other individual as designated by the Contracting Officer or the GTR.

(End of clause)

[71 FR 2441, Jan. 13, 2006]

2452.251-70 Contractor employee travel.

As prescribed in 2451.7001, insert the following clause in all cost-reimbursement solicitations and contracts involving travel:

CONTRACTOR EMPLOYEE TRAVEL (OCT 1999)

(a) To the maximum extent practical, the Contractor shall make use of travel discounts which are available to Federal employees while traveling in the conduct of official Government business. Such discounts may include, but are not limited to, lodging and rental car rates.

(b) The Contractor shall be responsible for obtaining and/or providing to his/her employees written evidence of their status with regard to their performance of Government contract work needed to obtain such discounts.

(End of clause)

[64 FR 46101, Aug. 23, 1999]

Subpart 2452.3—Matrix

2452.3 Provision and clause matrix.

HUDAR Matrix.

Key:					
Type of Contract:					
P/C	=	Provision or Clause	DDR	=	Dismantling, Demolition, or Removal of Improvements
			A&E	=	Architect-Engineering
UCF	=	Uniform Contract Format Section, when Applicable	FAC	=	Facilities
FP SUP	=	Fixed-Price Supply	IND DEL	=	Indefinite Delivery
CR SUP	=	Cost-Reimbursement Supply	TRN	=	Transportation
FP R&D	=	Fixed-Price Research & Development	SAP	=	Simplified Acquisition Procedures (excluding micro-purchase)
CR R&D	=	Cost Reimbursement Research & Development	UTL SVC	=	Utility Services
FP SVC	=	Fixed-Price Service	CI	=	Commercial Items
CR SVC	=	Cost Reimbursement Service			
FP CON	=	Fixed-Price Construction	Contract Purpose:		
CR CON	=	Cost Reimbursement Construction	R	=	Required
T&M LH	=	Time & Material/Labor Hours	RA	=	Required when Applicable
LMV	=	Leasing of Motor Vehicles	O	=	Optional
COM SVC	=	Communication Services	<input type="checkbox"/>	=	Revision

PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																							
PROVISION OR CLAUSE	PRESCRIBED IN	P/C	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
2452.201-70 Coordination of Data Collection Activities	2401.106-70	C	I	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA
2452.203-70 Prohibition Against the Use of Federal Employees	2403.670	C	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
2452.204-70 Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats)	2404.7001	C	I																				
Alternate I	2404.7001	C	I		R		R		R		R	RA			RA	RA	RA	RA	RA	RA	RA	RA	
Alternate II	2404.7001	C	I	R			R		R		RA			RA	RA	RA	RA	RA	RA	RA	RA	RA	R
2452.208-71 Reproduction of Reports	2408.802-70	C	I	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA
PROVISION OR CLAUSE	PRESCRIBED IN	P/C	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
2452.209-70 Potential Organizational Conflicts of Interest	2409.507-1	P	L	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA

