

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**48 CFR Parts 2401, 2402, 2406, 2408, 2409, 2411, 2413, 2415, 2416, 2419, 2422, 2426, 2432, 2437, 2442, 2446, 2448 and 2452**

[Docket No. FR-5010-F-01]

RIN 2535-AA27

**Amendments to HUD Acquisition Regulation (HUDAR)**

**AGENCY:** Office of the Chief Procurement Officer, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department of Housing and Urban Development Acquisition Regulation (HUDAR) to implement miscellaneous changes. The changes include corrections to provisions and the removal of obsolete text and clauses. This final rule reflects organizational changes within HUD and is limited to provisions that involve internal agency procedures.

**DATES:** *Effective Date:* February 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Frederick Graves, Policy and Field Operations Division, Office of the Chief Procurement Officer (Seattle Outstation), Department of Housing and Urban Development, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104-1000, telephone (206) 220-5259, fax (206) 220-5247 (these are not toll-free numbers). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The uniform regulation for the procurement of supplies and services by federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) 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)); and the general authorization in FAR 1.301. HUD published the most recent version

of the HUDAR on January 21, 2000 (65 FR 3571, 65 FR 3575).

**II. This Final Rule**

This final rule revises the HUDAR to better conform to the current FAR; correct or remove obsolete text, clauses, and provisions; and make other revisions to reflect organizational changes within HUD. The following describes HUDAR changes.

Section 2401.103 is revised to reflect the most recent delegations of procurement authority by the Secretary.

Section 2401.601-70 is revised to clarify that the Chief Procurement Officer (CPO), in fulfilling the role of the Department's Senior Procurement Executive, is responsible for the oversight of all departmental contracting operations, both in Headquarters and in the field.

Section 2401.601-71 is removed in its entirety. As a general rule, the Department is removing internal organizational content from its regulations.

Section 2401.602-3 is revised to require that requests for ratifications include specific information concerning the individual who created the unauthorized commitment and to require that requests be signed by the Assistant Secretary or equivalent in Headquarters or by the program office director in the field, as applicable; remove subparagraph (b)(3), which delegated authority for ratifications below the simplified acquisition threshold to one level above the Contracting Officer; provide for different receipt points for requests in the field and Headquarters; and delegate authority to the Deputy Chief Procurement Officer to ratify unauthorized commitments arising in HUD Headquarters.

Section 2401.603-2 is revised to remove agency-specific training requirements and to reflect the qualification standards developed by the Office of Federal Procurement Policy for GS-1102 occupational series employees.

Section 2402.101 is revised to reflect Head of Contracting Activity (HCA) responsibilities.

Section 2406.304-70 is revised to designate the Deputy Chief Procurement Officer as the official responsible for approving justifications for other than full and open competition for certain field procurements.

Provisions formerly at section 2437.110(b) have been revised and added to a new section 2408.802-70. This section applies to solicitations and contracts where the end product is written material and requires the clause

at section 2452.208-71, redesignated from section 2452.237-71, to be used. This clause contains standard requirements for the reproduction of written materials.

Section 2409.507-2 is revised to clarify that the clause at section 2452.209-71, Limitation on Future Contracts, is to be used in solicitations and contracts for services.

Section 2411.404 is revised to require the insertion of an effective date in contract documents for services. This revision does not apply to indefinite-delivery contracts.

Section 2413.307 is removed because the form it prescribes is obsolete.

Section 2415.303 is revised to reflect departmental policy that Assistant Secretaries, or their equivalent, for requiring activities be designated source selection authorities for selections made using the tradeoff process. Assistant Secretaries may delegate this function to other departmental officials. The section is also revised to make minor corrections in terminology.

Section 2415.606 is revised to reflect departmental reassignment of responsibility for Headquarters contracting operations to the Chief Procurement Officer.

Section 2416.406 is revised to clarify the applicability of clause 2452.216-70 to cost-type contracts, add a prescription for a new clause at 2452.216-71, renumber existing clauses, and differentiate the applicability of certain clauses to contracts and individual task or delivery orders.

Section 2416.505 is revised to clarify the circumstances under which Contracting Officers may designate ordering officials who may place task orders under indefinite-delivery contracts and correct the paragraph numbering to correspond to that of the FAR.

Section 2416.506-70 is revised to add a requirement that the Contracting Officer establish a schedule for the definitization of unpriced task orders and for the Head of Contracting Activity (HCA) to approve definitization periods greater than 180 days; prescribe the use of a standard contract clause for specifying the minimum and maximum amounts in indefinite quantity and requirements contracts; prescribe the use of a standard contract clause for inserting estimated quantities for order in requirements solicitations; and prescribe the use of a standard contract clause for ordering procedures under indefinite delivery contracts. In addition, the paragraphs are redesignated.

Section 2419.708 is revised to delete the prescription for the alternate to

clause 2452.219–70 (see 2452.219–70 discussion).

A new section 2419.800 is added to reference HUD's partnership agreement with the Small Business Administration (SBA) that permits HUD to directly award contracts under the SBA's Section 8(a) Program.

Section 2422.1408 is revised to clarify that the clause at 2452.222–70 is applicable when the contract requires the contractor to hold meetings, conferences, or seminars.

Sections 2426.7003 and 2452.226–70 are removed. The certification at 2452.226–70, prescribed by this section, is redundant to the certification prescribed at FAR section 52.219–1, Alternate I.

Section 2432.908 is revised to add a new paragraph (c)(3) to permit the Contracting Officer to tailor payment clauses for situations where payment will not be predicated on the submission of an invoice or voucher (e.g., the contractor is paid directly from the proceeds of the sale of HUD-owned real estate).

Section 2437.204 is added to redelegate the authority in FAR 37.204 to the Senior Procurement Executive.

Section 2442.1106 is removed. Its content was essentially redundant to section 2442.1107.

Section 2442.1107 is revised to clarify the applicability of clause 2452.242–71. A new alternate for use in fixed-price contracts for similar services is added.

Section 2446.502–70 is revised to clarify that the clause is applicable to all contracts.

A new part 2448 and subpart 2448.1 are added to implement FAR subpart 48.1. This new part consists of three new sections: Section 2448.102, entitled "Policies," which states which officials have authority in the value engineering process; section 2448.103, which states rules for processing value engineering change proposals; and section 2448.104–3, which delegates authority for calculating and tracking collateral savings to the Contracting Officer.

Section 2452.203–70 is revised to correspond to terminology used in the FAR.

Section 2452.211–70 is revised to include an effective date when different from the award date and to provide for setting forth any optional ordering periods.

Section 2452.216–71 is removed and replaced by a new section 2452.216–71, which provides coverage for fixed-price-award-fee contracts.

In section 2452.216–72, the prescriptive text citation is corrected. The statement that the Contracting

Officer's decisions are not subject to the disputes clause is removed.

In section 2452.216–73, the prescriptive text citation is corrected.

In section 2452.216–75, the prescriptive text citation is corrected.

New sections 2452.216–76, 2452.216–77, and 2452.216–78 are added to provide standard ordering and other terms for indefinite delivery contracts.

Section 2452.219–70 is revised to correct the clause title, correct the reference to FAR section 52.219–9, delete Alternate I to the clause, and delete information that is redundant to the FAR.

Section 2452.219–71 is removed. All reporting of subcontracting performance data must now be made via the governmentwide Electronic Subcontracting Reporting System (eSRS).

Section 2452.222–70 is revised to clarify that the contractor is responsible for ascertaining the specific accessibility needs of each meeting, seminar, or conference held pursuant to the contract.

Section 2452.226–70 is removed. See comments regarding section 2426.7003.

Section 2452.233–70 is revised to permit the insertion of the Head of Contracting Activity's (HCA) name and address.

Section 2452.237–70 is revised to remove language concerning the ratification in writing of the replacement of key personnel by the contractor, as well as language permitting amendment of the clause to add or subtract personnel. Contractors will still have to obtain prior Contracting Officer approval before diverting or replacing key personnel. The section is also revised to permit the inclusion of specific personnel descriptions, and tasks, duties, efforts, etc., for which each key personnel member is responsible. Last, the revision adds a definition of personnel that clarifies which personnel are key personnel.

Section 2452.237–71 is redesignated as 2452.208–71. The requirement for this clause is more appropriately located under subpart 2408.8, Acquisition of Printing and Related Supplies.

Section 2452.237–73 is revised to clarify that the technical representative is identified at time of award to more clearly prohibit guidance which causes the contractor to perform work outside the statement of work or specifications, to require contractor notification of the appointment of lower tier technical representatives, to provide for the inclusion of other restrictions on guidance specific to individual contracts, and to provide for contractor

notification to the Contracting Officer if the contractor believes that any guidance is in violation of the clause.

Section 2452.237–77 is revised to remove paragraph (d), which was contradictory to the requirements of paragraph (c), and to rename the clause, "Observance of Legal Holidays and Closure of HUD Facilities." This title more accurately describes the requirements of the clause than did its former name, "Observance of Legal Holidays and Administrative Leave." Closure of HUD facilities, rather than the granting of administrative leave to HUD employees, is the proper subject.

In section 2452.239–71, paragraph (d) is revised to substitute the word "limit" for the word "subrogate." "Limit" reflects the intended meaning of the sentence.

Section 2452.242–71 is revised to simplify the language in paragraph (a) and add a new subparagraph (b)(3) in which the Contracting Officer can specify the reporting period; edit the clause to improve its readability; and clarify that when used with individual task orders under contracts, the term contract refers to the task order. An Alternate I is added to tailor the clause for use in fixed-price arrangements.

Section 2452.246–70 is revised to delete the reference to the Standard Form 26, as contract awards may be made on other forms, and to clarify that the clause is applicable to all contracts.

### III. Findings and Certifications

#### *Justification for Final Rulemaking*

HUD's regulations at 24 CFR 10.1 state that notice and public procedure may be omitted with respect to statements of policy, interpretative rules, rules governing the Department's organization or its own internal practices or procedures. Because this rule is limited to updating the Department's internal practices and procedures as described in the regulations at 48 CFR chapter 24, HUD is omitting notice and comment procedures.

#### *Environmental Impact*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Paperwork Reduction Act*

The information collection requirements contained in this final rule are currently approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0091. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

#### *Other Matters*

Because this rule is limited to internal agency practices and procedures, this rule does not impose unfunded mandates within the meaning of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) or have federalism implications within the meaning of Executive Order 13132 (Federalism).

#### **List of Subjects**

##### *48 CFR Part 2401*

Government procurement, Reporting and recordkeeping requirements.

*48 CFR Parts 2402, 2406, 2408, 2409, 2411, 2413, 2415, 2416, 2432, 2437, 2442, 2446, and 2448.*

Government procurement.

##### *48 CFR Part 2419*

Government procurement, Small businesses.

##### *48 CFR Part 2422*

Government procurement, Individuals with disabilities, Labor.

##### *48 CFR Part 2426*

Colleges and universities, Government procurement, Minority businesses.

■ For the reasons discussed in the preamble, HUD amends title 48, Chapter 24 of the Code of Federal Regulations as follows:

#### **PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM**

■ 1. The authority citation for part 2401 continues to read as follows:

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

■ 2. Revise section 2401.103 to read as follows:

##### **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.

■ 3. Revise section 2401.601–70 to read as follows:

##### **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.

##### **2401.601–71 [Removed]**

■ 4. Remove section 2401.601–71.

■ 5. Revise section 2401.602–3 to read as follows:

##### **2401.602–3 Ratification of unauthorized commitments.**

(b)(1) Requests for ratification of unauthorized commitments arising in HUD Headquarters shall be submitted in writing to the Contracting Officer through the Chief Procurement Officer. The Assistant Secretary or equivalent official for the office that created the unauthorized commitment shall sign requests. Requests for ratification of unauthorized commitments arising in the field shall be submitted in writing to the Director of the cognizant FCO. The Director of the field-based office that created the unauthorized commitment shall sign the request.

(3) In accordance with FAR 1.602–3(b)(3), the Deputy Chief Procurement Officer is delegated authority to ratify unauthorized commitments arising in HUD Headquarters.

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

(7) Requests shall include:

(i) An explanation of the need for the services or supplies;

(ii) The reasons why normal procurement procedures were not followed;

(iii) The circumstances and events associated with the unauthorized commitment;

(iv) The price competition that was obtained or the price otherwise justified;

(v) The amount of any funding needed to meet the obligation created by the unauthorized commitment and evidence of funds availability;

(vi) The name and position of the individual who made the unauthorized commitment; and

(vii) A description of the corrective management measures to prevent future unauthorized commitments. If the individual who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

■ 6. Revise section 2401.603–2 to read as follows:

##### **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.

#### **PART 2402—DEFINITIONS OF WORDS AND TERMS**

- 7. The authority citation for part 2402 continues to read as follows:

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

- 8. In section 2402.101, revise the definition of *Head of Contracting Activity* to read as follows:

##### **2402.101 Definitions.**

\* \* \* \* \*

Head of Contracting Activity (HCA) is defined in accordance with FAR subpart 2.1. The following HUD officials are designated as HCAs:

(1) The Chief Procurement Officer, for HUD Headquarters procurements. The Chief Procurement Officer may delegate this authority to the Deputy Chief Procurement Officer; and

(2) The Directors, Field Contracting Operations, for procurements on behalf of their field-based requiring activities.

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#### **PART 2406—COMPETITION REQUIREMENTS**

- 9. The authority citation for part 2406 continues to read as follows:

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

- 10. Revise section 2406.304–70 to read as follows:

##### **2406.304–70 Approval of the justification—field procurements.**

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract with a value of more than \$1 million but not exceeding \$50 million, by the Deputy Chief Procurement Officer.

- 11. Add part 2408 to read as follows:

#### **PART 2408—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

##### **Subpart 2408.8—Acquisition of Printing and Related Supplies**

2408.802–70 Contract clause.

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

##### **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.

#### **PART 2409—CONTRACTOR QUALIFICATIONS**

- 12. The authority citation for part 2409 continues to read as follows:

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

- 13. Revise section 2409.507–2 to read as follows:

##### **2409.507–2 Contract clauses.**

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.

#### **PART 2411—DESCRIBING AGENCY NEEDS**

- 14. The authority citation for part 2411 continues to read as follows:

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

- 15. Revise section 2411.404 to read as follows:

##### **2411.404 Contract clause.**

(a) The Contracting Officer shall insert a clause substantially the same as the clause at 2452.211–70, Effective Date and Contract Period, in all solicitations and contracts for services, other than indefinite-delivery contracts.

(b) If the contract includes options to extend the period of the contract, the Contracting Officer shall use the clause with its Alternate I.

#### **PART 2413—SIMPLIFIED ACQUISITION PROCEDURES**

- 16. The authority citation for part 2413 continues to read as follows:

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

##### **2413.307 [Removed]**

- 17. Remove section 2413.307.

#### **PART 2415—CONTRACTING BY NEGOTIATION**

- 18. The authority citation for part 2415 continues to read as follows:

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

- 19. Revise section 2415.303(a) to read as follows:

##### **2415.303 Responsibilities.**

(a) In accordance with FAR 15.303, the source selection authorities are designated as follows:

(1) The Contracting Officer, for contracts awarded using the lowest price technically acceptable proposal process.

(2) The Assistant Secretary or equivalent for the office initiating the procurement for contracts awarded using the tradeoff process. The Assistant Secretary or equivalent may delegate this function to appropriate departmental personnel.

(3) For procurements for the performance of legal services by outside counsel using either the lowest price technically acceptable or tradeoff process, the General Counsel or his/her designee.

\* \* \* \* \*

- 20. Revise section 2415.606 to read as follows:

##### **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.

**PART 2416—TYPES OF CONTRACTS**

■ 21. The authority citation for part 2416 continues to read as follows:

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

■ 22. Revise section 2416.406 to read as follows:

**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.”

■ 23. Revise section 2416.505 to read as follows:

**2416.505 Ordering.**

(a) The Contracting Officer shall be the ordering official for all task orders when the price or cost, or any other terms, is arrived at through a negotiated process. 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 to be performed or the supplies to be obtained under the order are set forth in the contract, and there is no negotiation of order terms. The Contracting Officer may 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)(5) The departmental competition advocate also serves as the departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(5).

(i) Each HCA shall designate a contracting activity ombudsman for task and delivery order contracts.

(ii) The contracting activity ombudsman shall:

(A) Review complaints from contractors concerning task or delivery orders placed by the contracting activity;

(B) Be independent of the Contracting Officer who awarded or is administering the contract under which a complaint is submitted;

(C) Recommend any corrective action to the cognizant Contracting Officer; and

(D) Refer to the departmental ombudsman issues that cannot be resolved.

(iii) Contractors may request that the departmental ombudsman review complaints when they disagree with reviews conducted by the contracting activity ombudsman.

■ 24. Revise section 2416.506–70 to read as follows:

**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 and amounts for order.* The Contracting Officer shall insert the clause at 2452.216–76, Minimum and Maximum Quantities and Amounts for Order, in all indefinite-quantity solicitations and contracts. When the clause is used for definite-quantity or requirements solicitations and contracts, the Contracting Officer shall insert “none” for the minimum quantities and minimum amounts for order. When the quantity amounts are based upon labor rates established in the contract, the Contracting Officer shall use the clause with its Alternate I.

(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 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.

**PART 2419—SMALL BUSINESS PROGRAMS**

■ 25. The authority citation for part 2419 continues to read as follows:

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

■ 26. Revise the title of Subpart 2419.7 to read as follows:

**Subpart 2419.7—The Small Business Subcontracting Program**

■ 27. Revise section 2419.708 to read as follows:

**2419.708 Solicitation Provisions and Contract Clauses.**

(d) The Contracting Officer shall insert the provision at 2452.219–70 in negotiated solicitations exceeding \$500,000 (\$1,000,000 for construction) that are not set aside for small business or 8(a) concerns.

■ 28. Add subpart 2419.8 and section 2419.800 to read as follows:

**Subpart 2419.8—Small Business Administration Section (8)(a) Program****2419.800 General.**

(f) By Partnership Agreement, dated May 21, 2004, the Small Business Administration (SBA) has delegated to the Department of Housing and Urban Development (HUD) the authority to directly execute contracts awarded under SBA’s Section 8(a) program. The Senior Procurement Executive has issued internal guidance regarding the direct award of 8(a) contracts, consistent with Civilian Agency Acquisition Council Letter 98–3, “Direct 8(a) Contracting,” dated May 1, 1998.

## PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

- 29. Revise the authority citation for part 2422 to read as follows:

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

- 30. Revise section 2422.1408 to read as follows:

### 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.

## PART 2426—OTHER SOCIOECONOMIC PROGRAMS

- 31. The authority citation for part 2426 continues to read as follows:

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

### 2426.7003 [Removed]

- 32. Section 2426.7003 is removed.

## PART 2432—CONTRACT FINANCING

- 33. The authority citation for part 2432 continues to read as follows:

**Authority:** 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

- 34. Revise section 2432.908 to read as follows:

### 2432.908 Contract clauses.

(c)(1) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts except those for commercial services awarded pursuant to FAR Part 12.

(2) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement type solicitations and contracts when vouchers are to be sent directly to the paying office. The Contracting Officer shall insert the billing period agreed upon with the contractor (see also FAR clause 52.216–7, Allowable Cost and Payment).

(3) The Contracting Officer may substitute appropriate language for the clauses in (c)(1) and (2) above 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.

## PART 2437—SERVICE CONTRACTING

- 35. The authority citation for part 2437 continues to read as follows:

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

- 36. Add subpart 2437.2 and section 2437.204 to read as follows:

### 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.

## PART 2442—CONTRACT ADMINISTRATION

- 37. The authority citation for part 2442 continues to read as follows:

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

### 2442.1106 [Removed]

- 38. Section 2442.1106 is removed.

- 39. Revise section 2442.1107 to read as follows:

### 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.

## PART 2446—QUALITY ASSURANCE

- 40. The authority citation for part 2446 is as follows:

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

- 41. Revise section 2446.502–70 to read as follows:

### 2446.502–70 Contract clause.

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

- 42. Add part 2448 to read as follows:

## PART 2448—VALUE ENGINEERING

### Subpart 2448.1—Policies and Procedures

Sec.

2448.102 Policies.

2448.103 Processing value engineering change proposals.

2448.104–3 Sharing collateral savings.

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

### 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.

**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.

**PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 43. The authority citation for part 2452 continues to read as follows:

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

■ 44. Revise section 2452.203-70 to read as follows:

**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)

■ 45. Revise section 2452.211-70 to read as follows:

**2452.211-70 Effective Date and Contract Period.**

As prescribed in 2411.404(a), insert the following clause:

**EFFECTIVE DATE AND CONTRACT PERIOD (FEB 2006)**

(a) This contract shall be effective on \_\_\_\_\_ [Contracting Officer insert date at award].

(b) The contractor shall complete all work including all deliveries by \_\_\_\_\_ [Contracting Officer insert date at award].

(c) Delivery dates for specific services and deliverables shall be as set forth in the Schedule.  
(End of clause)

Alternate I (FEB 2006). As prescribed in 2411.404(b), add the following paragraph (d):

(d) In accordance with the clause at 52.217-9, "Option to Extend the Term of the

Contract," the contract may be extended for the following periods:

Option No.	Period
[list] .....	[dates].

(End of Clause)

■ 46. Revise section 2452.216-70 to read as follows:

**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)

■ 47. Revise section 2452.216-71 to read as follows:

**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)

■ 48. Revise section 2452.216-72 to read as follows:

**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 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)

■ 49. In section 2452.216-73, revise the undesignated introductory paragraph to read as follows:

**2452.216-73 Performance Evaluation Plan.**

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

\* \* \* \* \*

■ 50. Revise section 2452.216-74 to read as follows:

**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-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract.  
(End of clause)

Alternate 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)

■ 51. Revise section 2452.216–75 to read as follows:

**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 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)

■ 52. Add section 2452.216–76 to read as follows:

**2452.216–76 Minimum and Maximum Quantities and Amounts for Order.**

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

**MINIMUM AND MAXIMUM QUANTITIES AND AMOUNTS FOR ORDER (FEB 2006)**

The minimum quantity and/or amount to be ordered under this contract shall not be less than the minimum quantity and/or amount shown in the following table. The maximum quantity and/or amount to be ordered under this contract shall not exceed the maximum quantity and/or amount shown in the table.

**BASE PERIOD**

Minimum quantity	Minimum amount	Maximum quantity	Maximum amount
	\$		\$

**OPTION PERIOD**

Minimum quantity	Minimum amount	Maximum quantity	Maximum amount
	\$		\$

Continue for additional option periods.  
(End of clause)

*Alternate I (FEB 2006).* As prescribed in 2416.506–70(b), add the following paragraph:

The government is not obligated to order any specific minimum number of hours from any labor category or combination of categories, nor is the government limited, beyond the maximums set forth herein, to ordering any maximum number of hours from any labor category or combination of categories.

(End of clause)

■ 53. Add section 2452.216–77 to read as follows:

**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)

■ 54. Add section 2452.216–78 to read as follows:

**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)

*Alternate 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)

*Alternate 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)

■ 54. Revise section 2452.219–70 to read as follows:

**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)

**2452.219-71 [Removed]**

- 55. Remove section 2452.219-71.
- 56. Revise section 2452.222-70 to read as follows:

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

(End of clause)

**2452.226-70 [Removed]**

- 57. Remove section 2452.226-70.
- 58. Revise section 2452.232-70 to read as follows:

**2452.232-70 Payment Schedule and Invoice Submission (Fixed-Price).**

As prescribed in 2432.908(c)(1), insert a clause substantially the same as the following in all fixed-price solicitations and contracts:

**PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (FEB 2006)**

(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 No.	Applicable contract deliverable	Delivery date	Payment amount
1. [ ]			.....
2. [ ]			.....
3. [ ]			.....

(Continue as necessary)

(b) *Submission of Invoices.*

(1) Invoices shall be submitted as follows: original to the payment office identified on the award document (e.g., in Block 12 on the SF-26 or Block 25 on the SF-33, or elsewhere in the contract) with a copy to the Government Technical Representative (GTR) [*if the Contracting Officer determines that one copy must be submitted to the contracting office, add, "and a copy to the Contracting Officer"*]. To constitute a proper invoice, the invoice must include all items required by FAR clause 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., in Block 14 on the SF-26 or Block 21 on the SF-33). 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.

(End of clause)

- 59. Revise section 2452.232-71 to read as follows:

**2452.232-71 Voucher Submission (Cost-Reimbursement).**

As prescribed in 2432.908(c)(2), insert a clause substantially the same as the following in all cost-reimbursement solicitations and contracts:

**VOUCHER SUBMISSION (COST-REIMBURSEMENT) (FEB 2006)**

(a)(1) The contractor shall submit, \_\_\_\_\_ [*Contracting Officer insert billing period*], 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. All vouchers shall be distributed as follows, except for the final voucher, which shall be submitted in all copies to the Contracting Officer: original to the payment office, and one copy each to the Government Technical Representative (GTR) and the Contracting Officer identified in the contract.

(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 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.* The contractor shall provide the payment office with all information required by other payment clauses contained in this contract.

(End of clause)

- 60. Revise section 2452.233-70 to read as follows:

**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)

- 61. Revise section 2452.237-70 to read as follows:

**2452.237-70 Key Personnel.**

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

**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)

**2452.237-71 [Redesignated as 2452.208-71]**

- 62. Redesignate section 2452.237-71 as 2452.208-71.

■ 63. Revise section 2452.237–73 to read as follows:

**2452.237–73 Conduct of Work and Technical Guidance.**

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

**CONDUCT OF WORK AND TECHNICAL GUIDANCE (FEB 2006)**

(a) The Government Technical Representative (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.

(b) 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.

(c) 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.

(d) Certain of the GTR's duties and responsibilities may be delegated to one or more Government Technical Monitors (GTM) (see HUDAR subpart 2402.1). The Contracting Officer will notify the contractor in writing of the appointment of any GTMs.

(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)

■ 64. In section 2452.237–77, revise the undesignated introductory paragraph and undesignated introductory heading to read as follows, and remove paragraph (d):

**2452.237–77 Observance of Legal Holidays and Closure of HUD Facilities.**

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

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

\* \* \* \* \*

■ 65. In section 2452.239–71, revise the undesignated introductory paragraph, the undesignated introductory heading, and paragraph (d) to read as follows:

**2452.239–71 Information Technology Virus Security.**

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

**INFORMATION TECHNOLOGY VIRUS SECURITY (FEB 2006)**

\* \* \* \* \*

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

(End of clause)

■ 66. Revise section 2452.242–71 to read as follows:

**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:

(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)

■ 67. Revise section 2452.246–70 to read as follows:

**2452.246–70 Inspection and acceptance.**

As prescribed in 2446.502–70, insert the following clause in all solicitations and contracts:

**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)

Dated: December 21, 2005.

**Joseph A. Neurauter,**  
*Chief Procurement Officer.*

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