

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

[Docket No. FR-4115-I-01]

RIN 2535-AA24

HUD Acquisition Regulation; Miscellaneous Revisions

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) to implement changes made to the Federal Acquisition Regulation since the HUDAR's last issuance, and implement requirements of the Federal Acquisition Reform Act of 1996.

DATES: Effective Date: September 22, 1999.

Comment Due Date: October 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Field Operations Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410-3000 (voice (202) 708-0294, TDD (202) 708-1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

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 by the Chief Procurement Officer 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 Secretary's delegation effective October 6, 1998, (63 FR 54722); and the general authorization in FAR 1.301.

The most recent version of the HUDAR was published as a final rule on May 1, 1996 (61 FR 19467). Since then, the FAR has undergone numerous revisions. This interim rule amends the HUDAR to conform to the current FAR numbering, correct FAR citations and references, correct or remove obsolete text, clauses and provisions, and make other changes to comply with current FAR requirements. Please note that the Department is also publishing a proposed rule containing additional revisions to the HUDAR.

Section 2401.103 is revised to reflect Departmental reassignment of responsibility for prescribing the HUD Acquisition Regulation from the Assistant Secretary for Administration to the Chief Procurement Officer.

Section 2401.601 is revised to reflect the change in the designation of the Department's Senior Procurement Executive from the Assistant Secretary for Administration to the Chief Procurement Officer and related changes to the contracting authority of Departmental components.

Section 2401.603-2 is revised to delete obsolete language regarding the appointment of persons other than full-time Contracting Officers and the maintenance of certificates of appointment.

Section 2401.603-3 is revised to delete language redundant to the FAR and obsolete language concerning waivers to the selection criteria. Paragraph (b), which contained a requirement that the appointing official execute a separate statement that a selectee meets the Contracting Officer selection criteria, is deleted. The execution of the SF 1402, Certificate of Appointment, by the selecting official is sufficient evidence of the official's determination that an individual has met the selection criteria.

Section 2402.101 is revised to: change the definition of "Accounting Office" and "Senior Procurement Executive" to reflect changes in HUD's organization; delete definitions for "best value," "lowest-priced technically acceptable proposal" and "source selection official," which are redundant to definitions now in the FAR; and add definitions for "Government technical representative" and "Government technical monitor," HUD's terminology

for Contracting Officer's (technical) representative.

Section 2403.101 is amended to correct citations of Federal standards of conduct rules and to redesignate sections to reflect current FAR section numbering.

Section 2403.502 is revised to delete the obsolete revision number and date of the cited Departmental handbook and to eliminate the need to revise this provision when and if the handbook is revised in the future.

Section 2409.500 and 2409.504 are removed. The Department believes that adequate guidance and procedures are contained in FAR 9.5.

Numerous sections in Part 2413 are redesignated and retitled to reflect changes in section numbering and titles in FAR Part 13.

Section 2414.407-4 is revised to reflect changes in FAR section numbering.

A new section 2415.204 is added to designate the cognizant HCA as the responsible official for making exemptions pursuant to FAR 15.204(e).

Section 2415.413 is removed to reflect related changes in FAR Part 15.

Section 2415.506 is redesignated as 2415.606 and revised to reflect current Departmental policy concerning the receipt of unsolicited proposals.

Section 2415.604 is redesignated as 2415.303. A new paragraph (a) is added to implement the Departmental policy that the heads of requiring activities (i.e., program offices) serve as the source selection authorities for selections made using the trade-off approach and that the General Counsel or his/her designee serve as the selection authority for procurements for the performance of legal services by outside counsel.

A new section 2416.505 is added to designate the Departmental and contracting activity task order and delivery order ombudsmen.

Section 2415.613 is removed. Federal Acquisition Circular 97-2 removed the provision at FAR 15.613 permitting the use of alternative source selection procedures previously used by NASA and the Defense Department. Given the authority now contained in FAR 15.306(c) to limit the competitive range, the Department has determined that its alternative selection process is no longer needed.

In section 2419.503, the words "Acquired Property" are replaced with "Real Estate Owned" to reflect a change in Departmental terminology.

Section 2419.708 is revised to add a prescription for the use of a new clause at 2452.219-71.

The clause prescription at section 2424.202-70 and the relevant clause at

2452.224-70 are removed. The clause, which permitted the disclosure of proposals, is contradictory to the prohibition against such disclosure at FAR 24.202.

Numerous revisions are made to Parts 2425 and 2426 to align section numbering with the current FAR.

Section 2428.106-6 is revised to designate the Contracting Officer as the authorized Departmental official to furnish bonding information requested in accordance with FAR 28.106-6.

In section 2432.402, paragraph (c)(1) is revised to designate the HCAs as the Departmental officials authorized to make required determinations and findings with regard to advance payments. This is a change in terminology. The field contracting directors and Director, Office of Procurement and Contracts, currently the authorized officials, are HCAs.

In section 2432.908, the prescription for the use of alternates to the clauses at 2452.232-70 and 2452.232-71 is removed to reflect the Department's standardization contract payment invoicing procedures.

Part 2433 is revised to implement Departmental rules for agency-level protests in accordance with FAR 33.103(d)(4).

Section 2433.101-70 is removed. FAR 33.101 defines "day" for the purposes of this subpart.

Section 2433.102-70 is revised to clarify that HUD's Office of General Counsel has responsibility for handling protests filed with the GAO or other external adjudicating body, but not for agency-level protests made to the Contracting Officer.

Section 2433.103 is revised to establish a ten (10) day limit on requests for reviews of Contracting Officer decisions in agency-level protests. The ten (10) day period begins with the protestor's receipt of the decision. This section further designates the Head of the Contracting Activity as the Departmental official authorized to review the Contracting Officer's protest decision and approve any determination to award, or not suspend, a contract pending resolution of the protest.

Section 2433.103-70 is removed. The Department will use the standard time frame for responses to agency-level protests provided at FAR 33.103(g).

Section 2433.105 is deleted to reflect deletion of this coverage from the FAR.

Section 2437.110 is revised to redesignate paragraphs to reflect the consolidation of clauses at 2452.237-73 and 2452.237-74 into a single clause and the redesignation of paragraph (g). Paragraph (e) is revised to better clarify

the applicability of the clause at 2452.237-75.

Section 2437.110, paragraph (g), which prescribes the use of a clause for background investigations of personnel who work on sensitive automated systems, is redesignated as 2439.107(a). As this requirement concerns information technology systems, it is more appropriately located in Part 2439.

A new Section 2442.1502 is added to designate the Chief Procurement Officer as the Departmental official responsible for implementing procedures for evaluating contractor performance in accordance with FAR 42.1502 and 42.1503.

Subpart 2446.6 is removed. The requirement for use of a the form HUD-9519 for property inspections is not appropriately promulgated via the HUDAR. Where applicable for individual contracts, the use of this form may be expressed in the special provisions.

Section 2451.303 is redesignated as 2451.7001 to reflect the deletion of such instruction from the FAR. The section is revised to clarify that contractors under cost reimbursement contracts should make use of all available travel discounts; that the contractor is responsible for providing his/her employees with documentation required by vendors to obtain discounts; and to delete guidance in paragraph (c) which is redundant to FAR Part 31.

In section 2452.216-73, paragraph (b) is revised to clarify the original intent of the clause, i.e., that HUD may unilaterally revise performance evaluation plans (for award fee contracts) prior to the beginning of each contract period within the overall contract term.

A new section 2452.219-71 is added to require contractors to submit one copy of all required subcontracting reports (i.e., SF 294 and SF 295) to the Department's Office of Small and Disadvantaged Business Utilization (OSDBU).

Section 2452.232-70 is revised in accordance with revisions made to section 2432.908 and to comply with the electronic funds payment information requirements in FAR clauses 52.232-33 and 52.232-34.

Section 2452.232-71 is revised to comply with the electronic funds payment information requirements in FAR clauses 52.232-33 and 52.232-34; and to reflect changes in Departmental invoicing procedures.

Section 2452.233-70 is added to implement HUD's rules on internal reviews of HUD Contracting Officers' decisions on agency-level protests.

Section 2452.237-73 is revised to consolidate in it the former clauses at 2452.237-73 and 2452.237-74 regarding the provision of technical guidance to contractors by HUD technical staff. Section 2452.237-74 is removed.

Section 2452.237-75 is revised to clarify HUD's clearance requirements for contractor personnel who work on-site in HUD facilities.

Section 2452.237-76 is redesignated 2452.239-70 in accordance with changes made to section 2437 described above. The clause is also revised to reflect changes in HUD's requirements for background investigations for contractor employees who have access to Departmental information systems.

Section 2452.237-77 is revised to correct the prescriptive reference and to clarify the treatment of costs of salaries and wages of contractor personnel when HUD facilities are closed for administrative leave.

Part 2453 is revised to make miscellaneous corrections in terminology (e.g., changing "HUD Form" to "form HUD-") and remove obsolete forms.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because this interim rule amends the HUDAR to conform to the current FAR numbering, correct FAR citations and references, correct or remove obsolete text, clauses and provisions, and make other changes to comply with current FAR requirements. In addition, these amendments do not have a significant effect beyond the internal operating procedures of the agency, or a significant cost or administrative impact on contractors or offerors, which would have subjected them to the FAR 1.301(c) requirement that agency acquisition regulations be published for comment in the **Federal Register** in conformance with the procedures of FAR subpart 1.5. The Department invites public comment on the rule, however, to assure that

consideration is given to the full range of views that may be presented in the development of a final rule that will supersede this interim rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **COMMENTS** sections in the preamble of this interim rule.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(1) of the HUD regulations, the policies and procedures in this document are not subject to the individual compliance requirements of the authorities cited in 24 CFR 50.4, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

List of Subjects in 24 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24 of the Code of Federal Regulations, is amended 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).

2401.103 [Amended]

2. In § 2401.103, the words "Assistant Secretary for Administration" are revised to read "Chief Procurement Officer."

2401.105–2 [Amended]

3. In § 2401.105–2(c) all references to "2401.104–2" are revised to read "2401.105–2".

4. In § 2401.601–70, the first sentence is revised to read as follows.

2401.601–70 Senior Procurement Executive.

The Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures. * * *

5. Section 2401.601–71 is revised to read as follows:

2401.601–71 Office of Procurement and Contracts.

The Office of Procurement and Contracts, within the Office of the Chief Procurement Officer, including its Field Contracting Operations, is responsible for all Departmental procurement.

2401.601–72 [Removed]

6. Section 2401.601–72 is removed.

2401.601–73 [Removed]

7. Section 2401.601–73 is removed.

8. In § 2401.603–2, the first paragraph and paragraph (d) are revised to read as follows:

2401.603–2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation and ethics of the individual

to be appointed. The appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute and/or administer, and any other limitations on the scope of the authority to be exercised. In the area of experience, education and training, the following shall be required, unless contracting authority is limited to simplified acquisition procedures:

* * * * *

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all personnel whose primary duties are performed as a Contracting Officer.

9. Section 2401.603–3 is revised to read as follows:

2401.603–3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental delegation 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.

PART 2402—DEFINITIONS OF WORDS AND TERMS

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

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

11. Section 2402.101 is revised to read as follows:

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.

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 of the Contractor's performance and deliverables.

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

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement; and

(2) The Directors, Field Contracting Operations, for field procurement.

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

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.

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

12. The authority citation for part 2403 continues to read as follows:

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

13. Section 2403.101 is revised to read as follows:

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.

2403.408-1 [Removed]

14. Section 2403.408-1 is removed.

2403.409 [Redesignated]

15. Section 2403.409 is redesignated as 2403.405.

2403.502-70 [Redesignated]

16. Section 2403.502 is redesignated as 2403.502-70 and revised to read as follows:

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 Handbook 2000.3, Office of Inspector General Activities.

2403.601 [Redesignated]

17. Section 2403.601 is redesignated as 2403.602.

Part 2409—Contractor Qualifications

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

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

19. The title of Subpart 2409.5 is amended to add the words “and Consultant” after the word “Organizational.”

2409.500 [Removed]

20. Section 2409.500 is removed.

2409.502 [Removed]

21. Section 2409.502 is removed.

2409.504 [Removed]

22. Section 2409.504 is removed.

2409.701 [Redesignated]

23. Section 2409.701 is redesignated as 2409.7001.

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

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

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

2413.106-2 [Removed]

25. Section 2413.106-2 is removed.

2413.402 [Redesignated]

26. Section 2413.402 is redesignated as 2413.305-2 and a new subpart 2413.3 are added to read as follows:

Subpart 2413.3—Simplified Acquisition Methods

2413.403 [Redesignated]

27. Section 2413.403 is redesignated as 2413.305-3, and the FAR reference in the text is revised from “13.403(a)” to read “13.305-3”.

2413.505-1 [Redesignated]

28. Section 2413.505-1 is redesignated as 2413.307 and retitled, “Forms.”

2413.601 [Redesignated]

29. Section 2413.601 is redesignated as 2413.301 and retitled “Governmentwide commercial purchase card”, subpart heading 2413.6 is removed.

PART 2414—SEALED BIDDING

30. The authority citation for part 2414 continues to read as follows:

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

2414.407-4 [Amended]

31. Section 2414.407-4 is amended by deleting “(1) and (2)” from the FAR citation in the text.

PART 2415—CONTRACTING BY NEGOTIATION

32. 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).

33. A new subpart 2415.2 and a new section 2415.204 are added to read as follows:

Subpart 2415.2—Solicitation and Receipt of Proposals and Information

2415.204 Contract format.

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

2415.407 [Redesignated]

34. Subpart 2415.4 is removed and section 2415.407 is redesignated as 2415.209 and revised to read as follows:

2415.209 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215-70, Proposal Content, in all solicitations for negotiated procurements using the trade-off selection process expected to exceed the simplified acquisition threshold. The Contracting Officer shall adapt paragraph (c) of the provision (i.e., include, delete or further supplement subparagraphs) to address the particular requirements of the immediate solicitation. The provisions may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest price technically acceptable method, the provision shall be used with its Alternate I. If the proposed contract requires work on or access to sensitive automated systems or applications (see the clause at 48 CFR 2452.239-70), the provision shall be used with its Alternate II.

2415.413 [Removed]

35. Section 2415.413 is removed.

2415.413-1 [Removed]

36. Section 2415.413-1 is removed.

2415.413-2 [Removed]

37. Section 2415.413-2 is removed.

2415.505 and 2415.605 [Redesignated]

38. Section 2415.605 is redesignated as 2415.304 and section 2415.505 is redesignated as 2415.605.

2415.505-70 [Redesignated]

39. Section 2415.505-70 is redesignated as 2415.605-70, and in the first sentence the number “15.5” is revised to read “15.6”.

2415.506 [Redesignated]

40. Section 2415.506 is redesignated as 2415.606 and is revised 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 (Room 8228), 451 7th Street, SW, Washington, DC 20410.

(2) For all others—Department of Housing and Urban Development, Director, Office of Procurement and Contracts (NC), 451 7th Street, SW, Washington, DC 20410.

2415.604 [Redesignated]

41. A new subpart 2415.3 is added and section 2415.604 is redesignated as 2415.303 and revised to read as follows:

Subpart 2415.3—Source Selection**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; and,

(2) The head of the office initiating the procurement, or his/her designee, for contracts awarded using the “trade-off” process. The head of the initiating office may also delegate this function to the Contracting Officer.

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

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five members, with one member serving as the chairperson. For procurements involving technical complexity, the TEP may include advisors and committees to focus on specific technical areas or concerns. For relatively low dollar value and routine acquisitions of equipment,

supplies or services, the TEP may consist of one technical representative. The TEP is responsible for 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.

2415.605 [Redesignated]

42. Newly redesignated section 2415.304 is revised to read as follows:

2415.304 Evaluation factors.

(d)(1) The solicitation shall state the basis for the source selection decision as either “lowest-price technically acceptable” process (LPTA) or “trade-off process” (as defined at FAR subpart 15.1).

(2) When using the trade-off process, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTA, each evaluation factor is applied on a “pass-fail” basis; numerical scores are not assigned.

“Pass-fail” evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

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

2415.608 [Redesignated]

43. Section 2415.608 is redesignated as 2415.305; the reference to “FAR 15.608(a)(3)” in paragraph (3) is revised to “FAR 15.305(a)(3)”; the words “best value approach” in paragraph (3) are revised to read “trade-off process”; and paragraph (b) is removed.

2415.610 [Removed]

44. Section 2415.610 is removed.

2415.611 [Redesignated]

45. Section 2415.611 is redesignated as 2415.308 and revised to read as follows:

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.

2415.613 [Removed]

46. Section 2415.613 is removed.

2415.613–70 [Removed]

47. Section 2415.613–70 is removed.

2415.613–71 [Removed]

48. Section 2415.613–71 is removed.

2415.1005 [Redesignated]

49. Section 2415.1005 is redesignated as 2415.507.

PART 2416—TYPES OF CONTRACTS

50. 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).

2416.405 [Redesignated]

51. Section 2416.405 is redesignated as 2416.406.

52. A new subpart 2416.5 and a new section 2416.505 are added to read as follows:

Subpart 2416.5—Indefinite-Delivery Contracts**2416.505 Ordering.**

(b)(6) The Departmental competition advocate also serves as the Departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(6).

(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 which cannot be resolved.

(iii) Contractors may request that the Departmental Ombudsman review complaints when they disagree with the contracting activity ombudsman's review.

53. Section 2416.603–2 is revised to read as follows:

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).

PART 2419—SMALL BUSINESS PROGRAMS

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

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

2419.503 [Amended]

55. In § 2419.503, the words "Acquired Property" are revised to read "Real Estate Owned."

56. In § 2419.708, footnote 3 is removed and a new paragraph (f) is added to read as follows:

2419.708 Solicitation provisions and contract clauses.

* * * * *

(f) The Contracting Officer shall insert the clause at 48 CFR 2452.219-71 in solicitations exceeding \$500,000 that are not set aside for small businesses or to be accomplished under the 8(a) program. The Contracting Officer shall insert the clause in all contracts exceeding \$500,000 (\$1,000,000 for construction) that are not awarded to small businesses or to 8(a) business concerns.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

57. The authority citation for part 2424 is revised to read as follows:

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

58. The heading for subpart 2424.1 is revised to read as follows:

Subpart 2424.1—Protection of Individual Privacy

2424.202 [Redesignated]

59. Section 2424.202 is redesignated as 2424.203.

2424.202-70 [Removed]

60. Section 2424.202-70 is removed.

PART 2425—FOREIGN ACQUISITION

61. The authority citation for part 2425 continues to read as follows:

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

2425.402 [Amended]

62. Section 2425.402 is amended by adding the paragraph designation "(a)(1)" to the beginning of the text.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

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

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

2426.701 [Redesignated]

64. Section 2426.701 is redesignated as 2426.7001.

2426.702 [Redesignated]

65. Section 2426.702 is redesignated as 2426.7002.

PART 2428—BONDS AND INSURANCE

66. The authority citation for part 2428 continues to read as follows:

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

67. Section 2428.106-6 is revised to read as follows:

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.

PART 2432—CONTRACT FINANCING

68. 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).

69. The heading for subpart 2432.4 is revised to read as follows:

Subpart 2432.4—Advance Payments for Non-Commercial Items

70. In § 2432.402 paragraph (e)(1) is revised to read as follows:

2432.402 General.

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

* * * * *

2432.906 [Amended]

71. Section 2432.906 is amended by adding the paragraph designation "(a)" to the beginning of the text.

72. Section 2432.908 is revised to read as follows:

2432.908 Contract clauses.

(c)(1) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 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 48 CFR 2452.232-71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office.

PART 2433—PROTESTS, DISPUTES AND APPEALS

73. The authority citation for part 2433 continues to read as follows:

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

2433.101-70 [Removed]

74. Section 2433.101-70 is removed.

75. Section 2433.102-70 is revised to read as follows:

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.

76. Section 2433.103 is revised to read as follows:

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.

2433.103-70 [Removed]

77. Section 2433.103-70 is removed.

2433.105 [Removed]

78. Section 2433.105 is removed.

79. A new section 2433.106 is added to read as follows:

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.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

80. The authority citation for part 2436 continues to read as follows:

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

2436.602–5 [Amended]

81. In § 2436.602–5, the words “small purchase limitation” are revised to read “simplified acquisition threshold.”

PART 2437—SERVICE CONTRACTING

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

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

2437.101 [Removed]

83. Section 2437.101 is removed.
84–85. Section 2437.110 is amended by removing footnote 4; redesignating paragraph (g) as 2439.107(a); removing paragraph (e); redesignating paragraphs (f) and (h) as paragraphs (e) and (f); revising paragraphs (d) and redesignated paragraph (e) to read as follows:

2437.110 Solicitation provisions and contract clauses.

* * * * *

(d) The Contracting Officer shall insert the clause at 48 CFR 2452.237–73, Conduct of Work and Technical Guidance, in all service contracts other than contracts for commercial services awarded pursuant to FAR Part 12.

(e) The Contracting Officer shall insert the clause at 48 CFR 2452.237–75, Clearance of Contractor Personnel, in solicitations and contracts when contractor personnel will be required to work in and/or will have access to HUD facilities on a routine, ongoing basis and/or at all hours, e.g., performing custodial, building operations, maintenance, or security services. The clause shall be inserted in all solicitations and contracts for building/facility management and operations services. The clause may be used for other types of contracts (e.g., information technology services) when suitable as determined by the Contracting Officer.

* * * * *

2437.205 [Removed]

86. Section 2437.205 is removed.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

87. The authority citation for part 2439 reads as follows:

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

88. Newly designated section 2439.107 is revised to read as follows:

2439.107 Contract clauses.

(a) The Contracting Officer shall insert the clause at 48 CFR 2452.239–70, Background Investigations for Sensitive Automated Systems/Applications, in solicitations and contracts that involve work on, or access to, sensitive Departmental automated information systems or applications as they are defined in the clause.

PART 2442—CONTRACT ADMINISTRATION

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

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

90. A new subpart 2442.15 and a new section 2442.1502 are added to read as follows:

Subpart 2442.15—Contractor Performance Information

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 2446—QUALITY ASSURANCE

91. The authority citation for part 2446 continues to read as follows:

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

Subpart 2446.6—[Removed]

92. Subpart 2446.6 is removed.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

93. The authority citation for part 2451 is revised to read as follows:

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

Subpart 2451.3—[Redesignated]

94. Subpart 2451.3 is redesignated as subpart 2451.70.

2451.303 [Redesignated]

95. Section 2451.303 is redesignated as 2451.7001 and revised to read as follows:

2451.7001 Contract clause.

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.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

97–98. In section 2452.215–70, the date and the first paragraph of Alternate I is revised and Alternate II is revised to read as follows:

2452.215–70 Proposal Content.

* * * * *

Alternate I (Oct 1999)

As prescribed in 2415.209(a), if the award selection will be made through the lowest-priced technically acceptable proposal method, substitute paragraph (c) with the following:

* * * * *

Alternate II (Oct 1999)

As prescribed in 2415.209(a), if the proposed contract requires work on, or access to, sensitive automated systems as described in 2452.239–70, add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause at 48 CFR 2452.239–70 in Section I of this solicitation.

(End of Provision)

99. In § 2452.216–73 paragraph (b) is revised to read as follows:

2452.216–73 Performance evaluation plan.

* * * * *

(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.

100. A new section 2452.219–71 is added to read as follows:

2452.219–71 Submission of subcontracting reports.

As prescribed in 2419.708(f) insert the following clause:

Submission of Subcontracting Reports (Oct 1999)

The Contractor shall submit the Standard Form (SF) 294, Subcontracting Report for Individual Contracts and SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, except that, one copy of each form and any attachments shall be submitted to: Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of HUD, 451 Seventh Street, SW, Room 3130 (SS), Washington, DC 20410–1000.

(End of clause)

2452.224–70 [Removed]

101. Section 2452.224–70 is removed.

102. Section 2452.232-70 is revised to read as follows:

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

As prescribed in 2432.908(a), insert a clause substantially the same as the

following in all fixed-price solicitations and contracts:

Payment Schedule and Invoice Submission (Fixed-Price) (Oct 1999)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses,

the firm fixed-price stated in Part I, Section B of this contract.

(b) *Payment Schedule.* Payment of the contract price 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)			

(c) *Submission of Invoices.* 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) and one copy each to the Government Technical Representative and Contracting Officer. To constitute a proper invoice, the invoice must include all items required by FAR clause 52.232-25, "Prompt Payment."

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.

(d) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232-33, "Mandatory Information for Electronic Funds Transfer Payment," 52.232.34, "Optional Information for Electronic Funds Transfer Payment," or other supplemental information (contracts for commercial services) as applicable.

103. Section 2452.232-71 is revised to read as follows:

2452.232-71 Voucher submission (cost-reimbursement).

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

Voucher Submission (Cost-Reimbursement) (Oct 1999)

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and two (2) copies of each voucher. In addition to the items necessary per 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 (e.g., in Block 12 on the SF-26 or Block 25 on the SF-33, or elsewhere in the contract) and one copy each to the Government Technical Representative

and the Contracting Officer identified on the award document.

To assist the Government in making timely payments, the Contractor is requested to include on each voucher the appropriation number shown on the award 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 FAR clause 52.232-33, "Mandatory Information for Electronic Funds Transfer Payment" or 52.232.34, "Optional Information for Electronic Funds Transfer Payment," as applicable.

(End of clause)

104. A new Section 2452.233-70 is added 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 (Oct 1999)

(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. Such requests shall be made in writing to the cognizant Head of the Contracting Activity (HCA, see definition at HUDAR subpart 2402.1) within 10 days (see FAR 33.101 for the definition of "days") of the protestor's notification of the Contracting Officer's decision.

(b) The cognizant 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 clause)

105. Section 2452.237-73 is revised 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 (Oct 1999)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is [insert name] 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 scope 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 or electronic mail.

(End of clause)

2452.237-74 [Removed]

106. Section 2452.237-74 is removed.

107. Section 2452.237-75 is revised to read as follows:

2452.237-75 Clearance of contractor personnel.

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

Clearance of Contractor Personnel (Oct 1999)

(a) General. This contract requires contractor employees to work in, and have access to, a HUD facility. All such employees shall be required to provide background information and obtain a HUD building pass prior to working in the HUD facility.

(b) Background information. (1) For each contractor employee subject to the requirements of this clause, the contractor shall complete and deliver to the Government Technical Representative (GTR) the following forms: Form FD-258,

"Fingerprinting Charts" (original and one copy); and GSA Form 176, "Statement of Personal History" (original and one copy). The GTR will provide the contractor with blank forms upon request.

(2) The contractor shall deliver the forms required by paragraph (b)(1) to the GTR within five (5) calendar days after contract award or not later than five (5) calendar days before a covered employee will begin work at the HUD facility.

(3) The information provided in accordance with paragraph (b)(1) will be used to perform a background check to determine the eligibility of the contractor employees to work in the HUD facility. After completion of such review, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work in the HUD facility. The contractor shall immediately remove such employees from work on this contract which requires the employees' physical presence in the HUD facility.

(c) *Building passes.* (1) HUD will issue a building pass to each contractor employee determined to be eligible pursuant to the background check in paragraph (b). The Contractor shall provide the GTR with the names and Social Security numbers of all such employees. Contractor employees shall have their building passes on their persons at all times while working on HUD premises and shall present passes for inspection upon request by HUD officials or HUD security personnel.

(2) Building passes shall identify individuals as contractor employees and shall have an expiration date not exceeding the current term of the contract. Passes shall be renewed for each succeeding contract period, if any.

(3) The contractor shall return a contractor employee's pass to the GTR when the employment of any such employee is terminated, or when the employee no longer has a need for access to the HUD facility. Upon expiration of this contract, the contractor shall return to the GTR all building passes issued by HUD and not previously returned. The contractor is responsible for accounting for all passes issued to the contractor's employees.

(d) *Control of access.* HUD shall have and exercise full and 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 for his/her assigned contractual duties, and therefore will no longer be permitted access to the HUD facility. The contractor shall take immediate steps to remove such an employee from working on this contract and provide a suitable replacement.

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

2452.237-76 [Redesignated]

108. Section 2452.237-76 is redesignated as 2452.239-70 and is revised to read as follows:

2452.239-70 Background investigations for sensitive automated systems/applications.

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

Background Investigations for Sensitive Automated Systems/Applications (Oct 1999)

(a) *General.* This contract involves work on, or access to, [insert name or other identifier], a HUD information resource that is either a major application system or any general support system. A major application system is a mission critical system, a system or information resource which has high investment cost, or any system which contains Privacy Act-covered data. A general support system is any computer facility or major component thereof, or any network or telecommunications resource. All contractor employees working on this contract in positions which HUD has determined to have sensitive access to the information resource(s) identified above are required to have a background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using or operating the resources identified above, consistent with 5 CFR part 731. HUD may bar contractor employees from working on this contract for failing to meet or maintain the applicable suitability standards administered by the Department's Personnel Security Branch.

(b) *Citizenship-related requirements.* All contractor employees as described in paragraph (a) shall: (1) be United States (U.S.) citizens living in the U.S.; or (2) owe allegiance to the U.S.

(c) *Background investigation process.* (1) The GTR shall notify the contractor of those contractor employee positions requiring background investigations. For each contractor employee in such a position, the contractor shall submit the following completed forms: Standard Form (SF) 85P, Questionnaire for Public Trust Positions; FD-258, Fingerprint Chart; Fair Credit Reporting Act authorization form; and other information as may be necessary. The contractor shall submit an original and one copy of the SF 85P.

(2) The contractor shall deliver the forms and information required in paragraph (c)(1) to the GTR as soon as practicable once the contractor knows that the employee will be assigned to this contract, and no later than seven (7) calendar days after the employee begins work on this contract.

(3) 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 security forms described in paragraph (c)(1).

(4) Upon completion of the investigation process, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work on this contract. The contractor shall immediately remove such employees from work on this contract.

(5) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD terminates employment or otherwise is no longer performing work under this contract. The contractor shall provide a copy of the written notice to the Contracting Officer.

(d) *Security breach notification.* The contractor shall immediately notify the GTR and the Contracting Officer of any breach or suspected breach of security or any unauthorized disclosure of the information contained in the automated system specified in this contract.

(e) *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 are the sole property of HUD.

(2) The contractor shall require that any employees who may have access to the automated systems identified in paragraph (a) sign a pledge of nondisclosure of information. These pledges shall be signed by the employees before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of three years after final payment under this contract.

(f) *Security procedures.* The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of HUD Handbook 2400.24. The contractor shall provide a copy of such procedures and any revisions made to them during the period of the contract to the GTR.

(g) *Contractor compliance.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(h) *Other clearance requirements.* When any work performed by contractor personnel on-site in a HUD facility meets the criteria set forth in HUDAR 2437.110(e), the contractor shall also comply with the requirements of the clause at 48 CFR 2452.237-75, Clearance of Contractor Personnel.

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

109. Section 2452.237-77 is revised to read as follows:

2452.237-77 Observance of legal holidays and administrative leave.

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

Observance of Legal Holidays and Administrative Leave (Oct 1999)

(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 21 days per month.

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

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

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

(d) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

110. Section 2452.251-70 is revised to read as follows:

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)

Part 2453—Forms

111. The authority citation for part 2453 continues to read as follows:

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

PART 2453—[AMENDED]

112. The words "HUD Form" are replaced with "form HUD-" throughout part 2453.

2453.213 [Removed]

113. Section 2453.213 is removed.

2453.213-70 [Removed]

114. Section 2453.213-70 is removed.

2453.213-71 [Removed]

115. Section 2453.213-71 is removed.

2453.215-70 [Removed]

116. Section 2453.215-70 is removed.

2453.237-70 [Removed]

117. Section 2453.237-70 is removed.

2453.246-70 [Removed]

118. Section 2453.246-70 is removed.

Dated: July 16, 1999.

V. Stephen Carberry,
Chief Procurement Officer.

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