

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2404, 2406, 2407, 2409, 2415, 2416, 2417, 2419, 2426, 2427, 2428, 2432, 2437, 2439, 2442, and 2452

[Docket No FR-5571-F-02]

RIN 2501-AD56

HUD Acquisition Regulations (HUDAR)

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the HUDAR to implement miscellaneous changes. These changes include, for example, such amendments as removing provisions that are now obsolete, refining provisions to approve requests for deviation from the HUDAR, updating provisions that address the organizational structure of HUD, and adding provisions on contractor record retention.

DATES: *Effective date:* January 9, 2013.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This final rule follows a proposed rule. No public comments were received on the proposed rule, and this final rule implements the proposed rule with only minor technical changes.

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. 121(c)); and the general authorization in FAR 1.301.

HUDAR was last revised by final rule published on January 13, 2006 (71 FR 2432).

II. Public Comments

The proposed rule was published on March 16, 2012 (77 FR 15681), and the public comment period closed on May 15, 2012. As of the close of the public comment period, no public comments were received.

III. This Final Rule

This final rule implements without substantive change (there are minor corrections) the proposed amendments to the HUDAR, made by proposed rule published on March 16, 2012 (77 FR 15681). The proposed rule inadvertently omitted, in 2432.908, a paragraph prescribing the usage of HUDAR clause 2452.232-70. This necessary paragraph is now added at 2432.908(c)(2). The subsequent paragraphs are accordingly redesignated. In the newly designated 2432.908(c)(2), which is 2432.908(c)(1) in the currently codified HUDAR, a revision is made to reflect that the indicated clause is not used in performance-based contracts under which performance-based payments will be used. This is not a change in policy or contracting practice. The authority citations for certain sections are revised in this final rule because they were improperly worded (the authorities cited were and are correct, however). A reference to paragraph (a) in § 2432.908 was incorrect. The reference is corrected in this final rule to (c)(1).

The preamble to the proposed rule explained in detail the changes proposed; see 77 FR 15682 *et seq.* for a full description of the substantive changes made to the HUDAR that are implemented in this final rule.

IV. Findings and Certifications*Paperwork Reduction Act Statement*

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. The information collection requirements for the HUDAR are currently approved by OMB under control number 2535-0091. In accordance with the Paperwork Reduction Act, 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule makes technical changes to existing contracting procedures and does not make any major changes that would significantly impact businesses. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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 final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects**48 CFR Part 2401**

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 2402

Government procurement.

48 CFR Part 2403

Conflict of interests, Government procurement.

48 CFR Part 2404

Government procurement.

48 CFR Parts 2406, 2407, and 2409

Government procurement.

48 CFR Parts 2415, 2416, and 2417

Government procurement.

48 CFR Part 2419

Government procurement, Small business.

48 CFR Part 2426

Colleges and universities, Government procurement, Minority businesses.

48 CFR Part 2427

Government procurement, Inventions and patents.

48 CFR Part 2428

Government procurement, Surety bonds.

48 CFR Part 2432

Government procurement.

48 CFR Part 2437

Government procurement.

48 CFR Part 2439

Computer technology, Government procurement.

48 CFR Part 2442

Government procurement.

48 CFR Part 2452

Government procurement.
For the reasons discussed in the preamble, HUD amends 48 CFR chapter 24 as follows:

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

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

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

Subpart 2401.1—Purpose, Authority, Issuance

■ 2. Add section 2401.106–70 to read as follows:

2401.106–70 Contract clause.

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

Subpart 2401.4—Deviations From the FAR

■ 3. Revise section 2401.403 to read as follows:

2401.403 Individual deviations.

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

■ 4. Revise section 2401.404 to read as follows:

2401.404 Class deviations.

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

■ 5. Add section 2401.470 to read as follows:

2401.470 Deviations from the HUDAR.

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

■ 6. Add section 2401.471 to read as follows:

2401.471 Requests for deviations—FAR and HUDAR.

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

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

(1) Identify the deviation as individual or class;

(2) Identify the FAR or the HUDAR requirement from which a deviation is sought;

(3) Fully describe the deviation, its intended effect, and the circumstances in which it will be used;

(4) Explain why a deviation is required and include pertinent background and supporting information;

(5) State whether the deviation has been requested previously and if so, the circumstances and result of the previous request; and

(6) Identify the contractor(s) and the contract(s) (including dollar values) that would be affected.

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

(d) The contracting officer shall include a copy of each authorized deviation in the contract file(s) to which it pertains.

Subpart 2401.6—Career Development, Contracting Authority and Responsibilities

■ 7. In section 2401.602–3, revise paragraphs (b)(1) and (3) and remove paragraph (c)(7).

The revisions read as follows:

2401.602–3 Ratification of unauthorized commitments.

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

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

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PART 2402—DEFINITIONS OF WORDS AND TERMS

■ 8. The authority citation for part 2402 is revised to read as follows:

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

Subpart 2402.1—Definitions

■ 9. In section 2402.101, add in alphabetical order a definition of “Contracting Activity,” remove the definition of “Head of Contracting Activity (HCA)” and add in its place the definition of “Head of the Contracting Activity (HCA)” and revise the definition of “Legal Counsel” to read as follows:

2402.101 Definitions.

* * * * *

Contracting activity means the Office of the Chief Procurement Officer.

* * * * *

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

Procurement Officers. Delegated HCA authority may not be further redelegated.

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

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PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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

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

Subpart 2403.4—Contingent Fees

- 11. Revise section 2403.405(b) to read as follows:

2403.405 Misrepresentations or violations of the covenant against contingent fees.

* * * * *

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

PART 2404—ADMINISTRATIVE MATTERS

- 12. The authority citation for part 2404 continues to read as follows:

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

- 13. Add subpart 2404.7 to read as follows:

Subpart 2404.7—Contractor Records Retention

2404.7001 Contract clause.

The contracting officer shall insert the clause at 2452.204–72, Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats), in all solicitations and contracts exceeding the simplified acquisition threshold. The contracting officer shall use the basic clause with its Alternate I in cost-reimbursement type contracts. The contracting officer shall use the basic clause with its Alternate II in labor-hour and time-and-materials contracts.

PART 2406—COMPETITION REQUIREMENTS

- 14. The authority citation for part 2406 is revised to read as follows:

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

Subpart 2406.3—Other Than Full and Open Competition

- 15. Add section 2406.302–2 to read as follows:

2406.302–2 Unusual and compelling urgency.

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

2406.304–70 [Removed]

- 16. Remove section 2406.304–70.

Subpart 2406.5—Competition Advocates

- 17. Revise section 2406.501 to read as follows:

2406.501 Requirement.

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

PART 2407—ACQUISITION PLANNING

- 18. The authority citation for part 2404 continues to read as follows:

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

Subpart 2407.1—Acquisition Plans

- 19. Revise section 2407.102 to read as follows:

2407.102 Policy.

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

PART 2409—CONTRACTOR QUALIFICATIONS

- 20. The authority citation for part 2409 is revised to read as follows:

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

- 21. Add subpart 2409.4 to read as follows:

Subpart 2409.4—Debarment, Suspension, and Ineligibility

Sec.

2409.405 Effect of listing.

2409.407–1 General.

2409.470 HUD regulations on debarment, suspension, and ineligibility.

2409.405 Effect of listing.

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

2409.407–1 General.

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

2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424.

Subpart 2409.5—Organizational and Consultant Conflicts of Interest

- 22. Revise section 2409.503 to read as follows:

2409.503 Waiver.

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

Subpart 2409.70—[Removed]

- 23. Remove subpart 2409.70.

PART 2415—CONTRACTING BY NEGOTIATION

- 24. The authority citation for part 2415 is revised to read as follows:

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

- 25. Revise the heading for subpart 2415.2 to read as follows:

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

- 26. Add section 2415.203 to read as follows:

2415.203 Requests for proposals.

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

- 27. Revise 2415.204 to read as follows:

2415.204 Contract format.

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

- 28. Revise section 2415.209 to read as follows:

2415.209 Solicitation provisions and contract clauses.

(a)(1) The Contracting Officer shall insert a provision substantially the same as the provision at 2452.215–70, Proposal Content, in all solicitations for negotiated procurements using the tradeoff selection process (see FAR 15.101–1) expected to exceed the simplified acquisition limit. The Contracting Officer shall adapt

paragraph (c) of the provision (i.e., include, delete, revise, or further supplement subparagraphs) to address the particular requirements of the immediate solicitation. The provision 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-priced technically acceptable source selection process, the provision shall be used with its Alternate I. If the proposed contract requires work on, or access to, HUD systems or applications (see the clause at 2452.239-70), the provision shall be used with its Alternate II. When the contracting officer has determined that it is necessary to limit the size of the technical and management portion of offers submitted by offerors, the provision shall be used with its Alternate III. The contracting officer shall clearly identify in the provision any contents of the technical and management portion of offers that are excluded from the size limitation (e.g., proposed contractor staff resumes).

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

Subpart 2415.3—Source Selection

■ 29. Revise section 2415.303 to read as follows:

2415.303 Responsibilities.

(a) The Senior Procurement Executive is the agency head for the purposes of FAR 15.303(a).

(b)(1) The technical evaluation requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). The TEP may consist of any number of members as appropriate to the acquisition, with one member serving as the chairperson. As needed, the TEP may include advisors and committees to focus on specific technical areas or concerns. The TEP is responsible for fully documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

■ 30. Revise section 2415.304 to read as follows:

2415.304 Evaluation factors and significant subfactors.

(c)(3)(i) The extent of participation of small businesses in performance of the

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

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

■ 31. Revise section 2415.305(a)(3) to read as follows:

2415.305 Proposal evaluation.

(a) * * *

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the tradeoff process, predetermined threshold levels of technical acceptability for proposals shall not be employed. A technical evaluation report, which complies with FAR 15.305(a)(3), shall be prepared and signed by the technical evaluators, furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

■ 32. Add section 2415.370 to read as follows:

2415.370 Solicitation provision.

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

PART 2416—TYPES OF CONTRACTS

■ 33. The authority citation for part 2416 is revised to read as follows:

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

■ 34. Add subpart 2416.3 to read as follows:

Subpart 2416.3—Cost-Reimbursement Contracts

2416.307 Contract clauses.

(a) The contracting officer shall insert the clause at 2452.216-79, Estimated

Cost (No Fee), in all cost-reimbursement (no fee) type solicitations and contracts.

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

Subpart 2416.5—Indefinite-Delivery Contracts

■ 35. Revise section 2416.505 to read as follows:

2416.505 Ordering.

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

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

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

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

(b)(6) The Departmental competition advocate also serves as the Departmental task and delivery order ombudsman in accordance with FAR 16.505(b)(6). In addition to the duties set forth at FAR 16.505(b)(6), the ombudsman shall recommend any corrective action regarding affording fair opportunity to contractors to compete for orders to the responsible contracting officer.

■ 36. In section 2416.506-70, revise paragraph (b) to read as follows:

2416.506-70 Solicitation provisions and contract clauses.

* * * * *

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

* * * * *

PART 2417—SPECIAL CONTRACTING METHODS

■ 37. The authority citation for part 2417 is revised to read as follows:

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

Subpart 2417.2—Options

■ 38. Revise section 2417.204 to read as follows:

2417.204 Contracts.

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

(2) With regard to HUD indefinite-delivery contracts, the “contract period” requiring the SPE’s prior approval in paragraph (e)(1) of this section shall mean the ordering period of a contract. Unless otherwise specified within the contract, the 5-year limit shall not apply to the period that any task or delivery order issued within the contract’s ordering period extends beyond the final end date of the contract’s ordering period, regardless of whether the performance period of the order causes the total period of the contract to exceed 5 years. The issuance of any such task or delivery order does not require the SPE’s approval. Task or delivery orders with end dates extending beyond the ordering period of the contract may not exceed the final delivery date that the contracting officer has stated in the applicable indefinite-delivery FAR clause included in the contract (i.e., 52.216–20, “Definite Quantity,” paragraph (d); 52.216–21, “Requirements,” paragraph (f); or 52.216–22, “Indefinite Quantity,” paragraph (d)).

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

(4) The SPE is not required to approve any option properly exercised pursuant to the FAR clause at 52.217–8, “Option to Extend Services,” that extends the contract period beyond 5 years; provided that the total length of all options exercised pursuant to FAR clause 52.217–8 may not exceed 6 months; and provided that exercise of

any such options shall be in accordance with FAR 37.111. Any proposed extension of a contract beyond the 6-month maximum permitted by FAR 52.217–8 shall be considered a new requirement and shall be subject to the competition requirements of FAR part 6.

PART 2419—SMALL BUSINESS PROGRAMS

■ 39. The authority citation for part 2419 is revised to read as follows:

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

Subpart 2419.2—Policies

■ 40. In section 2419.201, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and revise newly designated paragraphs (d), (e) introductory text, and (e)(1), to read as follows:

2419.201 General policy.

(d) The Director of HUD’s Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the administration of the HUD small business program and for performing all functions and duties prescribed in FAR 19.201(d). This includes Department-wide responsibility for developing, implementing, executing, and managing these programs; providing advice on these programs; and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged, and women-owned small business; HUBZone small business; veteran-owned small business; and service-disabled veteran-owned small business concerns.

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

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

* * * * *

Subpart 2419.5—Set-Asides for Small Business**2419.503 [Removed and Reserved]**

■ 41. Remove and reserve section 2419.503.

Subpart 2419.7—The Small Business Subcontracting Program

■ 42. Revise section 2419.708 to read as follows:

2419.708 Solicitation provisions and contract clauses.

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

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

Subpart 2419.8—Contracting With the Small Business Administration (the 8(a) Program)

■ 43. Revise section 2419.800 to read as follows:

2419.800 General.

(f) By Partnership Agreement between the SBA and HUD, the SBA delegated to HUD’s Senior Procurement Executive its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Under the Partnership Agreement, a contract may be awarded directly to an 8(a) firm on either a sole-source or competitive basis. The SBA reserves the right to withdraw the delegation issued as a result of the Partnership Agreement; however, any such withdrawal shall have no effect on contracts already awarded under the Partnership Agreement.

■ 44. Add section 2419.803 to read as follows:

2419.803 Selecting acquisitions for the 8(a) Program.

■ 45. Add section 2419.803–70 to read as follows:

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

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

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

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

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

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

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

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

■ 46. Add section 2419.804 to read as follows:

2419.804 Evaluation, offering, and acceptance.

■ 47. Add section 2419.804–2 to read as follows:

2419.804–2 Agency offering.

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

■ 48. Add section 2419.804–3 to read as follows:

2419.804–3 SBA acceptance.

■ 49. Add section 2419.804–370 to read as follows:

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

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

(1) The SBA's decision whether to accept the requirement will be

transmitted to HUD in writing within 5 working days of receipt of the offer.

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

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

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

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

■ 50. Add section 2419.805 to read as follows:

2419.805 Competitive 8(a).

■ 51. Add section 2419.805–2 to read as follows:

2419.805–2 Procedures.

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

■ 52. Add section 2419.806 to read as follows:

2419.806 Pricing the 8(a) contract.

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

■ 53. Add section 2419.808 to read as follows:

2419.808 Contract negotiation.

■ 54. Add section 2419.808–1 to read as follows:

2419.808–1 Sole source.

(a) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the 8(a) contractor is responsible for negotiating with HUD within the time frame established by the

contracting officer. If the 8(a) contractor does not negotiate within the established time frame, and HUD cannot allow additional time, HUD, after notification and approval by SBA, may proceed with the acquisition from other sources.

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

■ 55. Add section 2419.811 to read as follows:

2419.811 Preparing the contracts.

■ 56. Add section 2419.811–1 to read as follows:

2419.811–1 Sole source.

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

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

(2) The contracting officer shall include appropriate contract clauses, as necessary, to reflect that the acquisition is an 8(a) contract awarded under the authority of the Partnership Agreement cited in 2419.800.

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

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

■ 57. Add section 2419.811–2 to read as follows:

2419.811–2 Competitive.

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

(b) If the acquisition is conducted under the Partnership Agreement cited

in 2419.800, the process for obtaining signatures shall be as specified in 2419.811–1(e).

- 58. Add section 2419.811–3 to read as follows:

2419.811–3 Contract clauses.

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

(f) In contracts and purchase orders awarded under the Partnership Agreement cited at 2419.800, the contracting officer shall substitute the clause at 2452.219–72, Section 8(a) Direct Award, for the clauses at FAR 52.219–11, “Special 8(a) Contract Conditions;” FAR 52.219–12, “Special 8(a) Subcontract Conditions;” and FAR 52.219–17, “Section 8(a) Award.”

- 59. Add section 2419.812 to read as follows:

2419.812 Contract administration.

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

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

- 60. The authority citation for part 2426 is revised to read as follows:

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

Subpart 2426.70—Minority Business Enterprises

2426.7001 [Removed and Reserved]

- 61. Remove and reserve section 2426.7001.

2426.7002 [Removed and Reserved]

- 62. Remove and reserve section 2426.7002.

PART 2427—PATENTS, DATA, AND COPYRIGHTS

- 63. The authority citation for part 2427 is revised to read as follows:

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

Subpart 2427.3—Patent Rights Under Government Contracts

- 64. Revise the section heading of section 2427.305–2 to read as follows:

2427.305–2 Administration by the Government.

* * * * *

- 65. Add subpart 2427.4 to read as follows:

Subpart 2427.4—Rights in Data and Copyrights

2427.470 Contract clause.

The contracting officer shall insert the clause 2452.227–70, Government Information, in all solicitations and contracts when the Government will provide information to the contractor, and/or when the contractor will obtain information on the Government’s behalf to perform work required under the contract. The contracting officer shall describe all information to be provided to the contractor in paragraph (d)(1) of the clause.

PART 2428—BONDS AND INSURANCE

- 66. The authority citation for part 2428 is revised to read as follows:

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

Subpart 2428.1—Bonds

- 67. Revise the heading of section 2428.106 to read as follows:

2428.106 Administration.

* * * * *

PART 2432—CONTRACT FINANCING

- 68. The authority citation for part 2432 is revised to read as follows:

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

- 69. Add section 2432.006 before subpart 2432.1 to read as follows:

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

- 70. Add section 2432.006–1 to read as follows:

2432.006–1 General.

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

- 71. Add section 2432.006–2 to read as follows:

2432.006–2 Definitions.

“Remedy coordination official” means the Senior Procurement Executive.

- 72. Add section 2432.006–3 to read as follows:

2432.006–3 Responsibilities.

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

- 73. Add section 2432.006–4 to read as follows:

2432.006–4 Procedures.

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

- 74. Add section 2432.007 to read as follows:

2432.007 Contract financing payments.

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

Subpart 2432.7—Contract Funding

- 75. Add section 2432.703–1 to read as follows:

2432.703–1 General.

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

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

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

- (A) Is for severable services;
- (B) Does not exceed one year in length; and

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

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

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

■ 76. Add section 2432.704 to read as follows:

2432.704 Limitation of cost or funds.

■ 77. Add section 2432.704–70 to read as follows:

2432.704–70 Incrementally funded fixed-price contracts.

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

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

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

(3) Considering whether to allot additional funds; and

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

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

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

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

■ 78. Add section 2432.705 to read as follows:

2432.705 Contract clauses.

■ 79. Add section 2432.705–70 to read as follows:

2432.705–70 Clause for limitation of Government's obligation.

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

Subpart 2432.9—Prompt Payment

■ 80. Revise section 2432.903 to read as follows:

2432.903 Policy.

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

■ 81. Revise section 2432.906 to read as follows:

2432.906 Making payments.

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

■ 82. In 2432.908, redesignate paragraphs (c)(1) through (3) as (c)(2) through (4), respectively; add new paragraph (c)(1); and revise newly redesignated paragraphs (c)(2) through (c)(4).

The addition and revisions read as follows:

2432.908 Contract clauses.

(c) * * *

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

(2) The contracting officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-price), in fixed-price contracts other than performance-based contracts under which performance-based payments will be used.

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

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

PART 2437—SERVICE CONTRACTING

■ 83. The authority citation for part 2437 is revised to read as follows:

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

Subpart 2437.1—Service Contracts—General

■ 84. Revise section 2437.110 to read as follows:

2437.110 Solicitation provisions and contract clauses.

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

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

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

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

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

■ 85. The authority citation for part 2439 is revised to read as follows:

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

Subpart 2439.1—General

■ 86. In section 2439.107, revise paragraph (a) to read as follows:

2439.107 Contract clauses.

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

* * * * *

PART 2442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 87. The authority citation for part 2442 is revised to read as follows:

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

■ 88. The heading for part 2442 is revised to read as set forth above.

■ 89. Add subpart 2442.3 to read as follows:

Subpart 2442.3—Contract Administration Office Functions

2442.302–70 Contract clause.

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

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 90. The authority citation for part 2452 is revised to read as follows:

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

■ 91. Add section 2452.204–70 to read as follows:

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

As prescribed in 2404.7001, insert the following clause:

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

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

comments, or highlighting). Contract records may be located or stored on the contractor's premises or at off-site locations.

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

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

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

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

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

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

provide a detailed explanation of why they are unavailable, and if known, their location.

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

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

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

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

(End of clause)

Alternate I (DEC 2012)

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

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

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

Alternate II (DEC 2012)

For labor-hour or time-and-materials type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

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

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

■ 92. In section 2452.215–70, add Alternate III immediately following Alternate II, to read as follows:

2452.215–70 Proposal content.

* * * * *

Alternate III (DEC 2012)

As prescribed in 2415.209(a), add the following paragraph (e) when the size of Part I, Technical and Management, offers will be limited:

(e) Size limit of Part I, Technical and Management.

(1) Offerors shall limit Part I, Technical and Management, of their initial offers to ___ [Contracting Officer insert number] pages, except for the information specifically exempted in paragraph (e)(3) of this clause. Offerors are cautioned that if Part I of their offers exceeds this limit, the Government will evaluate only the information contained in the pages up through the permitted number. Pages beyond that limit will not be evaluated.

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

(3) The following information is exempt from the limitation set forth in paragraph (1): [Contracting Officer list exemptions or enter "None"].

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

■ 93. Add section 2452.215–71 to read as follows:

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

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

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

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

■ 94. Add section 2452.215–72 to read as follows:

2452.215–72 Evaluation of small business participation.

As prescribed in 2415.370, insert the following provision:

EVALUATION OF SMALL BUSINESS PARTICIPATION (DEC 2012)

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

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

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

(End of Provision)

■ 95. Revise section 2452.216–76 to read as follows:

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

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

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

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

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

(End of clause)

■ 96. Add section 2452.216–79 to read as follows:

2452.216–79 Estimated cost (no fee).

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

ESTIMATED COST (NO FEE) (DEC 2012)

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

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

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

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

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

(End of clause)

■ 97. Add section 2452.216–80 to read as follows:

2452.216–80 Estimated cost and fixed-fee.

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

ESTIMATED COST AND FIXED-FEE (DEC 2012)

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

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

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

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

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

(End of clause)

■ 98. Add section 2452.219–71 to read as follows:

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

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

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

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

(c) Any award resulting from this solicitation will be made directly by the HUD

Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

■ 99. Add section 2452.219–72 to read as follows:

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

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

SECTION 8(A) DIRECT AWARD (DEC 2012)

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

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

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

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

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

(End of Clause)

■ 100. Add section 2452.219–73 to read as follows:

2452.219–73 Incorporation of subcontracting plan.

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

INCORPORATION OF SUBCONTRACTING PLAN (DEC 2012)

The Contractor's approved subcontracting plan, dated *[Contracting Officer insert date]* is hereby incorporated by reference and made a part of this contract.

(End of clause)

■ 101. Add section 2452.219–74 to read as follows:

2452.219–74 Small business subcontracting goals.

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

SMALL BUSINESS SUBCONTRACTING GOALS (DEC 2012)

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

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

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

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

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

(A) Small Disadvantaged Business— %

(B) Women-Owned Small Business— %

(C) Service-Disabled Veteran-Owned Small Business— %

(D) HUBZone Small Business— %

(End of Provision)

■ 102. Add section 2452.227–70 to read as follows:

2452.227–70 Government information.

As prescribed in 2427.470, use the following clause:

GOVERNMENT INFORMATION (DEC 2012)

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

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

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

(b) *Information Management and Information Security.*

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

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

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

(2) The Contractor shall not modify or alter the Government information, unless authorized in writing, in advance, by the Contracting Officer.

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

Description	Date to be Provided
<i>[Contracting Officer insert]</i>	

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

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

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

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

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

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

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

(C) Withdraw authority to use the information.

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

(e) *Rights in information.* Government information is the property of the U.S. Government unless otherwise specifically identified. The specific rights in any other information acquired or created by the Contractor under this contract shall be as expressed in the "Rights in Data" clause contained in this contract.

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

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

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

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

damage, or destruction of Government information.

(h) *Information alteration and disposal.*

Except as otherwise provided for in this contract, the Contractor shall not alter, destroy, or otherwise dispose of any Government information unless expressly directed by the Contracting Officer to do so.

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

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

(3) When required to return Government information to the Government, the Contractor shall do so at no cost to the Government. The Government shall not be responsible for the cost of data format conversion and the cost of delivery, if any.

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

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

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

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

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

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

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

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

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

(End of clause)

■ 103. 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 the following clause in all fixed-price solicitations and contracts:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (DEC 2012)

(a) *Payment Schedule.* Payment of the contract price (see Section B of the contract) will be made upon completion and acceptance of all work unless a partial payment schedule is included below [Contracting Officer insert schedule information]:

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

[Continue as necessary]

(b) *Submission of Invoices.* (1) The Contractor shall submit invoices as follows: original to the payment office and one copy each to the Contracting Officer and a copy to the Government Technical Representative (GTR) identified in the contract. To constitute a proper invoice, the invoice must

include all items required by the FAR clause at 52.232-25, "Prompt Payment."

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

33, or block 25 of the SF-1449). The contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(c) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by other payment clauses or other supplemental

information (e.g., contracts for commercial services) contained in this contract.

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

(End of clause)

■ 104. Revise section 2452.232–71 to read as follows:

2452.232–71 Voucher submission.

As prescribed in 2432.908(c)(3), insert the following clause in all cost-reimbursement, time-and-materials, and labor-hour solicitations and contracts:

VOUCHER SUBMISSION (DEC 2012)

(a) *Voucher Submission.*

(1) The contractor shall submit, _____ [Contracting Officer insert billing period, e.g., monthly], an original and two copies of each voucher. In addition to the items required by the clause at FAR 52.232–25, *Prompt Payment*, the voucher shall show the

elements of cost for the billing period and the cumulative costs to date. The Contractor shall submit all vouchers, except for the final voucher, as follows: original to the payment office and one copy each to the Contracting Officer and the Government Technical Representative (GTR) identified in the contract. The contractor shall submit all copies of the final voucher to the Contracting Officer.

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

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

(2) For time-and-materials and labor-hour contracts, the Contractor shall aggregate

vouchered costs by the individual task for which the costs were incurred and clearly identify the task or job.

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

(End of clause)

■ 105. Add section 2452.232–72 to read as follows:

2452.232–72 Limitation of Government's obligation.

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

LIMITATION OF GOVERNMENT'S OBLIGATION (DEC 2012)

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

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

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

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

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (a) of this clause, the Contractor will notify the Contracting Officer in writing at least _____ [90 days unless the Contracting Officer inserts a different number] days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the

total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable line item(s). This notification will state: the estimated date when that point will be reached; and an estimate of the amount of additional funding, if any, needed to continue performance of the applicable line items up to the next scheduled date for allotment of funds identified in paragraph (a) of this clause (or to another mutually agreed-upon date). The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the line item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (a) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed-upon date, the Contracting Officer will terminate any line item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "*Termination for Convenience of the Government.*"

(d) When additional funds are allotted for continued performance of the incrementally funded line item(s), the parties will agree to the period of contract performance covered

by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed-upon date(s), and the contract will be modified accordingly.

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

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

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

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

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

(End of clause)

■ 106. Add section 2452.232–73 to read as follows:

2452.232–73 Constructive acceptance period.

As prescribed in 2432.908, insert the following clause:

CONSTRUCTIVE ACCEPTANCE PERIOD (DEC 2012)

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

(End of clause)

■ 107. In section 2452.237–70, revise the introductory text to read as follows:

2452.237–70 Key personnel.

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

* * * * *

2452.237–72 [Redesignated as 2452.201–70]

■ 108. Redesignate section 2452.237–72 as 2452.201–70, and revise the introductory text to read as follows:

2452.201–70 Coordination of data collection activities.

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

* * * * *

■ 109. In section 2452.237–73, revise the introductory text and paragraph (a) to read as follows:

2452.237–73 Conduct of work and technical guidance.

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

CONDUCT OF WORK AND TECHNICAL GUIDANCE (DEC 2012)

(a) The Contracting Officer will provide the contractor with the name and contact information of the Government Technical Representative (GTR) assigned to this contract. The GTR will serve as the

contractor's liaison with the Contracting Officer with regard to the conduct of work. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

* * * * *

■ 110. Revise section 2452.237–75 to read as follows:

2452.237–75 Access to HUD facilities.

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

ACCESS TO HUD FACILITIES (DEC 2012)

(a) *Definitions.* As used in this clause—
Access means physical entry into and, to the extent authorized, mobility within a Government facility.

Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

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

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

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

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

(c) *Background information.* (1) For each contractor employee subject to the requirements of this clause and not in possession of a current PIV Card acceptable to HUD, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, "Questionnaire for Non-sensitive Positions," FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8–13, 16, and 17). The SF–85 and OF–306 are available from the OPM Web site, <http://www.opm.gov>. The GTR will provide all other forms that are not obtainable via the Internet.

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

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

(4) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in paragraph (c)(1) of this clause: Employee's full name, Social Security Number, and place and date of birth.

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

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

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

contractor shall not return PIV Cards to any person other than the GTR.

(e) *Control of access.* HUD shall have, and exercise, complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit to be permitted access to a HUD facility. The contractor shall immediately notify such employee that he/she no longer has access to any HUD facility, remove the employee from any such facility that he/she may be in, and provide a suitable replacement in accordance with the requirements of this clause.

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

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

(End of clause)

■ 111. In section 2452.237-77, revise the section heading, the introductory text, and the clause heading to read as follows:

2452.237-77 Temporary closure of HUD facilities.

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

TEMPORARY CLOSURE OF HUD FACILITIES (DEC 2012)

* * * * *

■ 112. Revise section 2452.239-70 to read as follows:

2452.239-70 Access to HUD systems.

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

ACCESS TO HUD SYSTEMS (DEC 2012)

(a) *Definitions:* As used in this clause—
Access means the ability to obtain, view, read, modify, delete, and/or otherwise make use of information resources.

Application means the use of information resources (information and information technology) to satisfy a specific set of user requirements (see OMB Circular A-130).

Contractor employee means an employee of the prime contractor or of any subcontractor, affiliate, partner, joint venture, or team members with which the contractor is associated. It also includes consultants engaged by any of those entities.

Mission-critical system means an information technology or telecommunications system used or operated by HUD or by a HUD contractor, or organization on behalf of HUD, that processes

any information, the loss, misuse, disclosure, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

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

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

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

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

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

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

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

(1) A United States (U.S.) citizen; or,
(2) A national of the United States (see 8 U.S.C. 1408); or,

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

(d) *Background investigation process.*

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

(i) For each contractor employee requiring access to HUD information systems, the contractor shall submit the following properly completed forms: Standard Form (SF) 85, "Questionnaire for Non-Sensitive Positions," FD 258 (Fingerprint Chart), and a partial Optional Form (OF) 306 (Items 1, 2, 6, 8-13, 16, and 17).

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

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

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

(3) Affected contractor employees who have had a federal background investigation without a subsequent break in federal employment or federal contract service exceeding 2 years may be exempt from the investigation requirements of this clause subject to verification of the previous investigation. For each such employee, the contractor shall submit the following information in lieu of the forms and information listed in paragraph (d)(1) of this clause: Employee's full name, Social Security number, and place and date of birth.

(4) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the investigative forms described in paragraph (d)(1) of this clause.

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

(6) Failure of the GTR to notify the contractor (see subparagraph (d)(1)) of any employee who should be subject to the requirements of this clause and is known, or should reasonably be known, by the contractor to be subject to the requirements of this clause, shall not excuse the contractor from making such employee(s) known to the GTR. Any such employee who is identified and is working under the contract, without having had the appropriate background

investigation or furnished the required forms for the investigation, shall cease to perform such work immediately and shall not be given access to the system(s)/application(s) described in paragraph (b) of this clause until the contractor has provided the investigative forms required in paragraph (d)(1) of this clause for the employee to the GTR

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

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

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

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

(f) *Control of access.* HUD shall have and exercise full and complete control over

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

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

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

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

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

- (i) The Federal Information Security Management Act (FISMA) of 2002;
- (ii) OMB Circular A-130, *Management of Federal Information Resources*, Appendix III, Security of Federal Automated Information Resources;
- (iii) HUD Handbook 2400.25, *Information Technology Security Policy*;
- (iv) HUD Handbook 732.3, *Personnel Security/Suitability*;
- (v) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2;
- (vi) Homeland Security Presidential Directive 12 (HSPD-12); and
- (vii) OMB Memorandum M-05-24, *Implementing Guidance for HSPD-12*.

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

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

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

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

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

(l) *Physical access to Federal Government facilities.* The contractor and any subcontractor(s) shall also comply with the requirements of HUDAR clause 2452.237-75 when the contractor's or subcontractor's employees will perform any work under this contract on site in a HUD or other Federal Government facility.

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

(End of clause)

Dated: November 27, 2012.

Jemine A. Bryon,
Chief Procurement Officer.

[FR Doc. 2012-29324 Filed 12-7-12; 8:45 am]

BILLING CODE 4210-67-P