

Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant* means all persons and vessels participating in the Maryland Freedom Swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(b) *Location*. The following location is a regulated area: All navigable waters of the Choptank River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°35'14.2" N, longitude 076°02'33.0" W, thence south to latitude 38°34'08.3" N, longitude 076°03'36.2" W, and bounded on the west by a line drawn from latitude 38°35'32.7" N, longitude 076°02'58.3" W, thence south to latitude 38°34'24.7" N, longitude 076°04'01.3" W, located at Cambridge, MD. All coordinates reference Datum NAD 1983.

(c) *Special local regulations*: (1) The COTP or Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, all persons and vessels within the regulated area at the time it is implemented shall depart the regulated area.

(3) Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Coast Guard Patrol Commander. Prior to the enforcement period, vessel operators may request permission to transit, moor, or anchor within the regulated area from the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). During the enforcement period, persons or vessel operators may request permission to transit, moor, or anchor within the regulated area from the Coast Guard Patrol Commander on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-

FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(4) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio.

(d) *Enforcement officials*. The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period*. This section will be enforced from 7 a.m. through 9:30 a.m. on May 20, 2018.

Dated: April 3, 2018.

Lonnie P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2402, 2416, 2437, 2442, and 2452

[Docket No. FR-6041-P-01]

RIN 2501-AD85

HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the HUD Acquisition Regulation (HUDAR) to implement miscellaneous changes. These changes include incorporation of several clauses and associated additions to the HUDAR matrix, replacement of references to Government Technical Representatives (GTRs) with references to Contracting Officer's Representatives (CORs), codification of deviations approved by HUD's Chief Procurement Officer (CPO) and minor corrections to clauses, provisions, and the HUDAR matrix.

DATES: *Comment due date:* June 8, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Communications and comment submissions must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of

General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. To submit comments electronically, commenters should follow the instructions provided on the website.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Akinsola A. Ajayi, Acting Assistant Chief Procurement Officer for Policy, Systems and Risk Management, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202-708-0294 (this is not a toll-free number), fax number 202-708-8912. Persons with hearing or speech impairments may access Dr. Ajayi's telephone number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

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

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of Housing and Urban Development 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 March 15, 2016 (81 FR 13747).

II. This Proposed Rule

This proposed rule would amend the HUDAR, 48 CFR chapter 24, to propose revising all clause and provision references to the Government Technical Representative or GTR to Contracting Officer's Representative or COR. Accordingly, the definition in 48 CFR 2402.101 of "Government Technical Representative" would be removed. Also, the obsolete term "Government Technical Monitor" would be removed. HUD is also proposing to codify certain agency-specific clauses, include class deviations in certain clauses, and make several administrative, nonsubstantive corrections, such as typographical corrections and updated applicability dates.

In part 2416, the rule would correct the prescription for 2416.506-70 to change "provision" to "clause," instruct the Contracting Officer to insert the clause at 2452.216-77, add prescriptions for clause 2452.216-81 and provision 2452.216-82 to codify agency-specific clauses. These clauses relate to estimated quantities, level of effort and fee payment, and labor categories.

In part 2437, the rule would revise 2437.110(e) to add prescriptions for

provision 2452.237-82 and clause 2452.237-83 relating to controlled unclassified information to codify a class deviation previously approved by the CPO on June 18, 2015.

In part 2442, the rule would revise 2442.1107 to codify a class deviation previously approved by the CPO on April 1, 2016, to (1) revise the procurement instruments, types of contracts, and types of services being acquired to those to which the clause will be applicable, (2) adjust the threshold at which the clause becomes applicable, and (3) make other minor changes.

In part 2452, the rule would:

Make minor typographical, nonsubstantive corrections to clauses 2452.203-70, 2452.208-71, 2452.215-70, 2452.216-80, 2452.219-72, 2452.232-70, and 2452.242-71;

Change references to Government Technical Representative or GTR to Contracting Officer's Representative or COR respectively;

Add clause 2452.216-81, Level of Effort and Fee Payment, and clause 2452.216-82, Labor Categories, Requirements, and Estimated Level of Effort. These are previously agency-specific clauses that HUD now wishes to codify. Clause 2452.216-81 provides contractors with the total level of effort to be provided and the method for calculating the fee. Clause 2452.216-82 provides estimated hours and labor categories to assist vendors in developing proposals for immediate requirements; these estimates are not binding upon the Government;

Codify a class deviation approved by the CPO on October 19, 2016, to clause 2452.232-71 at paragraph (b)(2) to require contractors to provide supporting documentation with vouchers that adequately prove the legitimacy and compliance of costs claimed, and the ability to appropriately allocate costs claimed;

Revise clause 2452.237-73 to remove the second sentence of paragraph (b). In the current codification, that sentence relates to notification of a change in

status of the Government Technical Representative;

Add provision 2452.237-82, Access to Controlled Unclassified Information (CUI), pursuant to a class deviation previously approved by the CPO on June 18, 2015;

Codify clause 2452.237-83, Access to Controlled Unclassified Information (CUI), pursuant to a class deviation previously approved by the CPO on June 18, 2015;

Pursuant to a class deviation signed by the CPO on October 16, 2015, codify a class deviation to clauses 2452.237-75, Access to HUD Facilities, and 2452.239-70, Access to HUD Systems, to add a requirement for contractors to report the status of PIV cards to the Government on a quarterly basis. Additionally, in 2452.237-75 and 2452.239-70, a definition of "contract" is added;

In 2452.246-70, a clause relating to inspection and acceptance of work is added as prescribed in 2446.246-70.

In the matrix, four clauses or provisions are added relating to level of effort and fee payment, labor categories, requirements and estimated level of effort, and access to controlled unclassified information. Additionally, some corrections of "Provision or Clause" (P/C) and "Uniform Contract Format" (UCF) designations are made.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). 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.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Annual cost
HUDAR:						
2452.204-70	20	1	20	16	320	\$14,080.00
2452.209-70	10	1	10	0.5	5	220.00
2452.209-72	2	1	2	1	2	88.00
2452.215-70	150	1	150	80	12,000	528,000.00
2452.215-70, Alt I	25	1	25	40	1,000	44,000.00
2453.215-72	25	4	100	2	200	8,800.00
2452.216-72	2	4	8	2	16	704.00

REPORTING AND RECORDKEEPING BURDEN—Continued

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Annual cost
2452.216–75	2	4	8	40	320	14,080.00
2452.216–78, Alt II	5	1	5	4	20	880.00
2452.219–70	50	1	50	0.5	25	1,100.00
2452.219–74	1	1	1	16	16	704.00
2452.227–70	5	1	5	40	200	8,800.00
2452.237–70	150	1	150	1	150	6,600.00
2452.237–75 (initial)	100	1	100	8	800	35,200.00
2452.237–75 (report)	100	4	400	8	3,200	140,800.00
2451.237–81	20	1	20	0.5	10	440.00
2452.239–70 (initial)	100	1	100	8	800	35,200.00
2452.239–70 (report)	100	4	400	8	3,200	140,800.00
2452.242–71 (plan)	40	4	160	8	320	14,080.00
2452.242–71 (report)	10	4	40	6	240	10,560.00
2453.227–70	1	1	1	8	8	352.00
Contractor Release	15	1	15	1	15	660.00
Contractor Assignment of Rebates, Credits	1	1	1	1	1	44.00
Total Costs						1,006,192.00

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication date. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–6041–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building,

Washington, DC 20503, Fax number: 202–395–6947

and to one of the two options below:

Ms. Colette Pollard, HUD Reports Liaison Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410

or

Interested persons may submit comments regarding the information collection requirements electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically via the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. To submit comments electronically, commenters should follow the instructions provided on the website.

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 proposed 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. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed 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 proposed 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 proposed 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 in 48 CFR Parts 2402, 2416, 2437, 2442, and 2452

Government procurement.

For the reasons discussed in the preamble, HUD proposes to amend 48 CFR chapter 24 as follows:

PART 2402—DEFINITIONS OF WORDS AND TERMS

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

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

2402.101 [Amended]

- 2. Amend 2402.101 by removing the definitions of “Government Technical Monitor (GTM)” and “Government Technical Representative (GTR)”.

PART 2416—TYPES OF CONTRACTS

- 3. The authority citation for part 2416 continues to read as follows:

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

- 4. Amend 2416.506–70 by revising paragraph (c) and adding paragraphs (e) and (f) to read as follows:

2416.506–70 Solicitation provisions and contract clauses.

* * * * *

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

* * * * *

(e) *Level of effort and fee payment.* The Contracting Officer shall insert clause 2452.216–81, Level of Effort and Fee Payment, in all level-of-effort term contracts.

(f) *Labor categories, requirements, and estimated level of effort.* The Contracting Officer shall insert provision 2452.216–82, Labor

Categories, Requirements, and Estimated Level of Effort, in all level-of-effort solicitations. Contracting Officer’s Representatives will provide the labor descriptions and estimated number of hours. Contracting Officers will obtain wage rate determinations for any classifications covered by the Service Contract Act.

PART 2437—SERVICE CONTRACTING

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

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

- 6. Amend 2437.110 by adding paragraphs (e)(7) and (8) to read as follows:

2437.110 Solicitation provisions and contract clauses.

* * * * *

(e) * * *

(7) The Contracting Officer shall insert provision 2452.237–82, Access to Controlled Unclassified Information (CUI), in Section L of solicitations when controlled unclassified information (“CUI”), as defined in the provision, will be provided to potential offerors for the purpose of preparing offers.

(8) The Contracting Officer shall insert clause 2452.237–83 in Section H, Access to Controlled Unclassified Information (CUI), of solicitations and contracts under which contractor and/or subcontractor employees will be granted access to controlled unclassified information (CUI) as defined in the clause.

PART 2442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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

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

- 8. Revise 2442.1107 to read as follows:

2442.1107 Contract clause.

(a) For purposes of clause 2452.242–71, the term “contract” shall also include task orders and purchase orders.

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

- (1) A contract exceeds \$1,000,000, including all options; and
- (2) The contract is a completion type that requires the delivery of an overall end deliverable or solution (e.g., evaluation, study, model).

(c) To the extent the clause will not normally be included in commercial

contracts meeting the requirements stated in paragraphs (a) and (b) of this section, and in instances where the clause is to be incorporated, pursuant to FAR 12.301(f), a waiver to the standard commercial requirements, to include the clause, is not required.

(d) The Contracting Officer shall use the basic clause for cost type, labor-hour, and time and materials contracts for the services described in paragraph (b) of this section. The clause shall be used with its alternate for fixed-price type contracts for the services described in paragraph (b). The Contracting Officer may elect to incorporate the clause into contracts below the established threshold.

(e) The clause is not applicable to contracts that only expend a level of effort without a completion deliverable/product due, e.g., temporary services.

(f) This clause is not applicable to Information Technology service contracts being managed through Earned Value Management techniques that require reporting of Earned Value Management.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

Subpart 2452.2—Texts of Provisions and Clauses

- 10. Revise 2452.203–70 to read as follows:

2452.203–70 Prohibition against the use of federal employees.

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

PROHIBITION AGAINST THE USE OF FEDERAL EMPLOYEES ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

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

- 11. Revise 2452.208–71 to read as follows:

2452.208–71 Reproduction of reports.

As prescribed in 2408.802–70, insert the following clause in solicitations and

contracts where the contractor is required to produce, as an end product, publications or other written materials: REPRODUCTION OF REPORTS ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying the number of pages by the number of copies. A production unit is one sheet, size 8.5 by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters and plates which are to be used on single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

■ 12. Amend 2452.215–70 by revising Alternate II to read as follows:

2452.215–70 Proposal content.

* * * * *

Alternate II

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

PROPOSAL CONTENT ALTERNATE II ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(e) *Size limits of Parts I and II.* (1) Offerors shall limit submissions of Parts I and II of their initial proposals to the page limitations identified in the Instructions to Offerors. Offerors are cautioned that, if any Part of their proposal exceeds the stipulated limits for that Part, the Government will evaluate only the information contained in the pages

up through the permitted number. Pages beyond that limit will not be evaluated.

(2) A page shall consist of one side of a single sheet of 8.5" x 11" paper, single spaced, using not smaller than 12-point type font, and having margins at the top, bottom, and sides of the page of no less than one inch in width.

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

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

(End of Provision)

■ 13. Revise 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 ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(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)

■ 14. Add 2452.216–81 to read as follows:

2452.216–81 Level of effort and fee payment.

As prescribed in 2416.506–70(f), insert the following clause in all level-of-effort term contracts:

LEVEL OF EFFORT AND FEE PAYMENT ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(a) The total level of effort to be provided under this contract is _____ hours. The contractor shall be reimbursed for the actual labor costs incurred.

(b) The contractor shall be paid the fixed fee specified in B. _____, Estimated Cost and Fixed Fee, herein, on a prorated basis in proportion to the percentage of the level of effort (LOE) performed at the time of billing in accordance with the following formula:

(Number of acceptable hours delivered) divided by (Total hours in level of effort) X (Total fixed fee) = Fee payment
(e.g., 1,000 hours delivered/10,000 hours (LOE) x \$15,000 = \$1,500)

(c) In no event shall the amount of fee paid under the contract exceed the total fixed fee specified in B. [], Estimated Cost and Fixed Fee, herein.

(End of clause)

■ 15. Add 2452.216–82 to read as follows:

2452.216–82 Labor categories, requirements, and estimated level of effort.

As prescribed in 2416.506–70(g), insert the following provision in all level-of-effort solicitations:

LABOR CATEGORIES, REQUIREMENTS, AND ESTIMATED LEVEL OF EFFORT ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(a) The Government anticipates that the following categories of labor shall be necessary to provide the services required by any contract resulting from this solicitation. Offerors must provide evidence that proposed staff meet the technical requirements for each category.

(1) [Insert labor titles and technical requirements]

(b) To assist offerors in the preparation of proposals, the Government estimates that the following levels of effort (staff hours) will be necessary to provide the services required by any contract resulting from this solicitation. These estimates are not binding on the Government. Offerors must break out their proposed costs by labor category. The contract performance period is intended to be for a total of [] months (a base period of [] months with [] [insert number of options] [] [insert number of months per option]-month option periods. The actual duration of the base period may be different. Offerors may propose labor at different rates per contract period.

STAFF HOURS

Labor category	Base period	1st option period	2nd option period	3rd option period	4th option period
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[Insert titles and estimated number of hours per category]

(End of provision)

■ 16. Revise 2452.219–72 to read as follows:

2452.219–72 Section 8(a) direct awards.

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

SECTION 8(A) DIRECT AWARD
 ([ABBREVIATED MONTH AND YEAR OF
 DATE OF PUBLICATION OF FINAL RULE])

(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(s). 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)

■ 17. Revise Alternate II of 2452.232-70 to read as follows:

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

* * * * *

ALTERNATE II ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

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

(b) *Submission of invoices.* (1) The Contractor shall obtain access and submit invoices to the Department of Treasury Bureau of Fiscal Services' Invoice Platform Processing System via the Web at URL:

<https://arc.publicdebt.treas.gov/ipp/fsippqrg.htm> in accordance with the instructions on the website. To constitute a proper invoice, the invoice must include all items required by the FAR clause at 52.232-25, "Prompt Payment."

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

■ 18. Revise 2452.232-71 to read as follows:

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

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

2452.232-71 VOUCHER SUBMISSION (COST-REIMBURSEMENT, TIME-AND-MATERIALS, AND LABOR HOUR)
 ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(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 Contracting Officer's Representative (COR) 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) The Contractor shall submit all necessary supporting documentation with vouchers that adequately demonstrate that costs claimed (1) have been incurred (including time sheets from the prime and subcontractor's automated or manual time tracking records and paid invoices for materials acquired), (2) reflect that they are allocable to the contract tasks, and (3) comply with cost principles in the Federal

Acquisition Regulation and HUD Acquisition Regulation. The Contracting Officer may disallow all or part of a claimed cost that is inadequately supported.

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

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

(End of clause)

ALTERNATE I ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

As prescribed in HUDAR Section 2432.908(c)(3), replace paragraphs (a)(1) and (2) with the following Alternate I paragraphs to HUDAR Clause 2452.232-71, Voucher Submission (Cost Reimbursement, Time-And-Materials, and Labor Hour) in time and material, cost-reimbursable and labor hour solicitations and contracts other than performance-based under which performance-based payments will be used and where invoices are to be submitted electronically by email, but will not be paid through the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system.

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

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

(End of Alternate I)

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

ALTERNATE II ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(a) *Voucher submission.* (1) The Contractor shall obtain access and submit invoices to the

Department of Treasury Bureau of Fiscal Services' Invoice Platform Processing System via the Web at URL: <https://arc.publicdebt.treas.gov/ipp/fsippqrg.htm> in accordance with the instructions on the website. To constitute a proper voucher, in addition to the items required by the clause at FAR 52.232–25, Prompt Payment, the voucher shall show the elements of cost for the billing period and the cumulative costs to date.

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

(End of Alternate II)

■ 19. Revise 2452.237–73 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 ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(a) The Contracting Officer will provide the contractor with the name and contact information of the Contracting Officer's Representative (COR) assigned to this contract. The COR 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 COR's status or the designation of a successor COR.

(b) The COR for liaison with the Contractor as to the conduct of work is [to be inserted at time of award] or a successor designated by the Contracting Officer.

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

(1) Causes the Contractor to perform work outside the statement of work or specifications of the contract;

(2) Constitutes a change as defined in FAR 52.243–1;

(3) Causes an increase or decrease in the cost of the contract;

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

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

(d) The COR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five (5) calendar days after oral issuance. The COR may issue such guidance via telephone, facsimile (fax), or electronic mail.

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

(f) The Contractor shall promptly notify the Contracting Officer whenever the Contractor believes that guidance provided by any government personnel, whether or not specifically provided pursuant to this clause,

is of a nature described in paragraph (b) of this clause.

(End of clause)

■ 20. Revise 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 ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

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

“Contract” means any authorized contractual instrument, including, but not restricted to, task orders, purchase orders, Blanket Purchase Agreement calls, etc.

“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 the performance of this contract.

Unescorted 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 unescorted 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: Electronic Standard Form (SF) 85, “Questionnaire for Non-Sensitive Positions via e-QIP,” completed USAcess enrollment (electronic fingerprinting) and Optional Form (OF) 306 (Items 1 through 17). Forms SF–85 and OF–306 are available from OPM's website, <http://www.opm.gov>. The electronic questionnaire is available on OPM's e-QIP

site, <https://www.opm.gov/investigations/e-qip-application/>. The COR 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 COR as secure as possible.

(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 COR 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: completed PIV and Pre-Security Form.

(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 (1) successfully cleared the FBI National Criminal History Fingerprint Check, (2) HUD has initiated the background investigation for the contractor employee, and (3) a Security Approval Notice from HUD PSD via PSDContractorIn-box@hud.gov has been received. 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 three 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 for the employee, including adjudication of the investigation results, 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 COR 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 COR 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 COR will instruct the Contractor on how to return the PIV Card, and upon expiration of this contract, the COR will instruct the Contractor on 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 COR.

(4) The Contractor shall submit a report to the Contracting Officer and COR no later than five (5) calendar days after the end of each calendar quarter that provides the status of each employee who is required to work in a HUD facility during the performance of the contract. At a minimum, the report shall identify the contractor and the contract number, and list for each employee the following information:

- (i) Employee name;
- (ii) Name of HUD facility where employee works;
- (iii) Date background check submitted;
- (iv) Date PIV Card issued;
- (v) PIV card number;
- (vi) Date employee no longer has need of the HUD PIV Card;
- (vii) Date Contracting Officer and COR were notified that employee no longer had need of the HUD PIV Card; and
- (viii) Date PIV Card was returned to COR.

(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 COR 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)

■ 21. Add 2452.237-82 to read as follows:

2452.237-82 Access to controlled unclassified information (CUI).

As prescribed in HUDAR 2437.110(e)(7), the Contracting Officer shall insert provision 2452.237-82 in Section L of solicitations when controlled unclassified information

(CUI), as defined in the provision, will be provided to potential offerors for the purpose of preparing offers.

ACCESS TO CONTROLLED UNCLASSIFIED INFORMATION (CUI) ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(a) For the sole purpose of preparing an offer in response to this solicitation, HUD may make certain controlled unclassified information (CUI) available to prospective offerors.

(b) CUI:

(1) Is any information which the loss, misuse, or modification of, or unauthorized access to, could adversely affect the national interest or 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;

(2) Is not available to the general public;

(3) May include:

(i) Government acquisition-sensitive information, including source selection information as defined at section 2.101 of the Federal Acquisition Regulation (48 CFR chapter 1); contractor bid or proposal information;

(ii) Information contained in individual contracts that is not public information and such contract information that is contained in Government databases; proprietary economic, financial, or business information (e.g., salary information) provided to the Government by other parties (e.g., other contractors) or belonging to HUD;

(iii) Personally identifiable information (PII) that includes, but is not limited to, Social Security numbers, names, dates of birth, places of birth, parents' names, credit card numbers, applications for entitlements, and information relating to a person's private financial, income, employment, and tax records; and

(iv) Other information that the HUD Contracting Officer (CO) or other authorized HUD employee explicitly identifies as CUI.

(4) May exist in various physical media (e.g., paper, electronic file, audio, or video disc), may be transmitted orally, developed under or pre-exist any related contract, and may be in its original form, or a derivative form (i.e., where the information has been included in contractor-generated work, or where it is discernible from materials incorporating or based upon such information).

(c) As a prior condition to being provided access to any CUI, each prospective offeror shall execute the following nondisclosure agreements and deliver the executed agreements to the Contracting Officer:

(1) Nondisclosure Agreement between the Department of Housing and Urban Development ("HUD") and Offeror Granting Conditional Access to Controlled Unclassified Information ("Offeror Agreement") (see Attachment J-____ [contracting officer insert attachment number]). This agreement must be executed by an officer or other representative of the

company authorized to bind the firm to the commitments made by the agreement and the individual nondisclosure agreements executed by those offeror employees or representatives to whom the sensitive information will be provided.

(2) Nondisclosure Agreement between the Department of Housing and Urban Development and Offeror Employee or Other External Party Granting Conditional Access to Controlled Unclassified Information ("Nondisclosure Agreement") (see Attachment J-____ [contracting officer insert attachment number]). A separate agreement must be executed by each person to whom access to CUI will be provided, regardless of whether HUD or the Offeror provides such access. The offeror is responsible for ensuring that each individual who is provided access to CUI executes a nondisclosure agreement.

(3) NDAs must be submitted to the CO and COR within ten (10) days after contract award or as otherwise specified by the CO.

(d) CUI will be provided to prospective offerors as follows: [describe how information will be provided including: the party responsible for providing access to information, the procedure for obtaining access, and the format in which the information is contained; e.g., "by the contracting officer on compact disk (CD) at the pre-proposal meeting].

(e) The offeror's failure to comply with any part of this provision or with the terms of the required nondisclosure agreements may disqualify the offeror for consideration of any contract awarded under this solicitation. (End of Provision)

■ 22. Add 2452.237-83 to read as follows:

2452.237-83 Access to controlled unclassified information (CUI).

As prescribed in HUDAR 2437.110(e)(8), the Contracting Officer shall insert clause 2452.237-83 in Section H of solicitations and contracts under which contractor and/or subcontractor employees will be granted access to controlled unclassified information as defined in the clause.

ACCESS TO CONTROLLED UNCLASSIFIED INFORMATION (CUI) ([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(a) For the sole purpose of performing work required under this contract, the contracting officer may grant the contractor—including contractor employees, subcontractors, and subcontractor employees—access to controlled unclassified information (CUI).

(b) CUI:

(1) Is any information which the loss, misuse, or modification of, or unauthorized access to, could adversely affect the national interest or 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;

(2) Is not available to the general public;

(3) May include:

(i) Government acquisition-sensitive information, including source selection information as defined at section 2.101 of the Federal Acquisition Regulation (48 CFR chapter 1); contractor bid or proposal information;

(ii) Information contained in individual contracts that is not public information and such contract information that is contained in Government databases; proprietary economic, financial, or business information (e.g., salary information) provided to the Government by other parties (e.g., other contractors) or belonging to HUD;

(iii) Personally identifiable information (PII) that includes, but is not limited to social security numbers, names, dates of birth, places of birth, parents' names, credit card numbers, applications for entitlements, and information relating to a person's private financial, income, employment, and tax records; and

(iv) Other information that the HUD contracting officer or other authorized HUD employee explicitly identifies as CUI; and

(4) May exist in various physical media (e.g., paper, electronic file, audio or video disc) or be transmitted orally, may be developed under or pre-exist any related contract, and may be in its original form or a derivative form (i.e., where the information has been included in contractor-generated work, or where it is discernible from materials incorporating or based upon such information).

(c) As a prior condition to being provided access to any CUI, each contractor or subcontractor employee shall execute the nondisclosure agreement in attachment J. _____ [contracting officer insert attachment number] to this contract and deliver the executed agreement to the contracting officer.

(d) The contractor shall include this clause in all subcontracts.

(e) The contractor's failure to comply with any part of this clause or with the terms of the required nondisclosure agreements may result in the termination of this contract for default.

(End of Clause)

■ 23. Revise 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
([ABBREVIATED MONTH AND YEAR OF DATE OF PUBLICATION OF FINAL RULE])

(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 Office of Management and Budget (OMB) Circular A–130).

“Contract” means any authorized contractual instrument, including, but not restricted to, task orders, purchase orders, Blanket Purchase Agreement calls, etc.

“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 the Office of Personnel Management (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 Contracting Officer's Representative (COR) 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: Electronic Standard Form (SF) 85, “Questionnaire for Non-sensitive Positions” via e-QIP, completed USAccess enrollment (electronic fingerprinting) and Optional Form (OF) 306 (Items 1 through 17). The SF–85 and OF–306 are available from the OPM website, <http://www.opm.gov>. The electronic questionnaire is available on OPM's e-QIP site, <https://www.opm.gov/investigations/e-qip-application/>.

(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: Electronic SF–85P, “Questionnaire for Public Trust Positions” via e-QIP; Electronic Standard Form (SF) 85, “Questionnaire for Non-sensitive Positions via e-QIP,” completed USAccess enrollment (electronic fingerprinting) and Optional Form (OF) 306 (Items 1 through 17). The SF–85 and OF–306 are available from the OPM website, <http://www.opm.gov>. The Electronic questionnaire is available on OPM's e-QIP site, <https://www.opm.gov/investigations/e-qip-application/>; and a Fair Credit Reporting Act form (authorization for the credit-check portion of the investigation). Contractor employees shall complete the Medical Release behind the SF–85P.

(iii) The electronic questionnaires (e-QIP) SF–85, 85P, and OF–306 are available from OPM's websites <https://www.opm.gov/investigations/e-qip-application/> and <http://www.opm.gov>. The COR 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 COR as securely as possible.

(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: PIV and Pre-Security Form.

(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 COR 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 COR's notification.

(6) Failure of the COR to notify the Contractor (see paragraph (d)(1) of this clause) 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 COR. 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 to the COR for the employee, as required in paragraph (d)(1) of this clause.

(7) The Contractor shall notify the COR 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 (1) successfully cleared an FBI National Criminal History Fingerprint Check, (2) HUD has initiated the background investigation for the contractor employee, and (3) a Security Approval Notice from HUD PSD via PSDContractorIn-box@hud.gov has been received. 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 three 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 for the employee, including adjudication of the investigation results, 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 COR 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 COR 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 COR will instruct the Contractor as to how to return the PIV Card. Upon expiration of this contract, the COR 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 COR.

(4) The Contractor shall submit a report to the Contracting Officer and COR no later than five (5) calendar days after the end of each calendar quarter that provides the status of each employee who is required to work in a HUD facility during the performance of the contract. At a minimum, the report shall identify the Contractor and the contract number, and list for each employee the following information:

- (i) Employee name;
- (ii) Name of HUD facility where employee works;
- (iii) Date background check submitted;
- (iv) Date PIV Card issued;
- (v) PIV card number;
- (vi) Date employee no longer has need of the HUD PIV Card;
- (vii) Date Contracting Officer and COR were notified that employee no longer has need of the HUD PIV Card; and
- (viii) Date PIV Card returned to COR.

(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 COR 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 COR 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 COR.

(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);
- (ii) Office of Management and Budget (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 COR.

(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 clause are applicable to performance of the subcontract.
(End of clause)

■ 24. Amend 2452.242–71 by revising the introductory text and main clause to read as follows:

2452.242–71 Contract management system.

As prescribed in 2442.1107, insert the following clause:

CONTRACT MANAGEMENT SYSTEM
([ABBREVIATED MONTH AND YEAR OF
DATE OF PUBLICATION OF FINAL RULE])

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

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

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

(i) A narrative portion that:

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

(B) Describes the contract schedule, including the period of time needed to accomplish each task and activity (see paragraph (b)(1)(ii)(B) of this clause);

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

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

(ii) A graphic portion showing:

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

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

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

(i) A narrative portion that:

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

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

(ii) A graphic portion showing:

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

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

(C) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the

reporting period for budgeted work, and the projected costs required to complete the work under the contract.

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

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

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

(End of clause)

* * * * *

■ 25. Revise 2452.246–70 to read as follows:

2452.246–70 Inspection and acceptance.

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

INSPECTION AND ACCEPTANCE
([ABBREVIATED MONTH AND YEAR OF
DATE OF PUBLICATION OF FINAL RULE])

Inspection and acceptance of all work required under this contract shall be performed by the Contracting Officer's Representative (COR) or other individual as designated by the Contracting Officer or COR.
(End of clause)

■ 26. Revise 2452.3 to read as follows:

2452.3 Provision and clause matrix.

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2452.216-76 Minimum and Maximum Quantities and Amounts for Order	2416.506-70(b)	C	I	RA																			
2452.216-77 Estimated Quantities - Requirements Contract	2416.506-70(c)	C	I	RA																			
2452.216-78 Ordering Procedures	2416.506-70(d)	C	I	RA																			
Alternate I	2416.506-70(d)	C	I	RA																			
Alternate II	2416.506-70(d)	C	I	RA																			
2452.216-79 Estimated Cost (No Fee)	2416.307(b)	C	I		RA		RA		RA		RA												
2452.216-80 Estimated Cost and Fixed-Fee	2416.307(b)	C	I		RA		RA		RA		RA												
2452.216-81 Level of Effort and Fee Payment	2416.506-70(f)	C	I			RA		RA															
2452.216-82 Labor Categories, Requirements, and Estimated Level of Effort	2416.506-70(g)	P	L			RA		RA															
2452.219-70 Small Business Subcontracting Plan Compliance	2419.708(d)	P	L	RA			RA	RA															
2452.219-71 Notification of competition limited to eligible 8(a) concerns - Alternate III to FAR 52.219-18	2419.811-3(d)(3)	C	I																				
2452.219-72 Section 8(a) Direct Awards (Deviation)	2419.811-3(f)	C	I																				
2452.219-73 Incorporation of Subcontracting Plan	2419.708(b)	C	I	RA			RA	RA															
2452.219-74	2419.708(b)	P	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O			O	O

2452.237-77 Temporary Closure of HUD Facilities	2437.110(e)(4)	C	I			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
2452.237-79— Post-Award Conference	2437.110(e)(5)	C	I			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
Alternate I	2437.110(e)(5)	C	I			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
2452.237-81 LABOR CATEGORIES, UNIT PRICES PER HOUR, AND PAYMENT	2437.110(e)(6)	C	I			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
2452.237-82 Access to Controlled Unclassified Information (CUI)	2437.110(e)(7)	P	L			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
2452.237-83 Access to Controlled Unclassified Information (CUI)	2437.110(e)(8)	C	H			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
PROVISION OR CLAUSE	PRESCRIBED IN	P/C	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
2452.239-70 Access to HUD Systems	2439.107(a)	C	I			RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA						
2452.239-71 Information Technology Virus Security	2439.107(b)	C	I	RA	RA	RA	RA	RA	RA			RA		RA				RA		RA		RA
2452.242-70 Indirect costs	2442.705-70	C	I		RA		RA		RA		RA	RA										
2452.242-71 Contract Management System	2442.1107	C	F			RA		RA		RA	RA	RA		RA	RA	RA		RA		O	RA	RA
Alternate I	2442.1107	C	F			RA		RA		RA		RA		RA	RA	RA		RA		O	RA	RA
2452.244-70 Consent to Subcontract	2444.204(a)	C	I	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA	RA								
2452.246-70 Inspection and acceptance	2446.502-70	C	E	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
2452.251-70 Contractor Employee Travel	2451.7001	C	I			RA		RA		RA	RA			RA	RA	RA		RA			RA	

Dated: February 28, 2018.

Keith W. Surber,

Chief Procurement Officer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 170720687-8212-01]

RIN 0648-BH06

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to the preamble of the proposed regulations published on March 13, 2018, governing the take of marine mammals incidental to the U.S. Navy (Navy) training and testing activities in the Atlantic Fleet Training and Testing (AFTT) Study Area. This action is necessary to correct an error in where sections of the table were omitted in the **Federal Register** notice on March 13, 2018.

DATES: Applicable on April 9, 2018.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS; phone: (301) 427-8401, Stephanie.Egger@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule published March 13, 2018 (83 FR 10954) for the take of marine mammals incidental to the Navy's training and testing activities in the AFTT Study Area. This correction replaces Table 4 contained in the preamble of the proposed training activities within the AFTT Study Area.

Need for Correction

As published on page 10963 of the preamble to the proposed rule, *Table 4. Proposed Training* was incorrect. Sections of the table were missing from the preamble, specifically Amphibious Warfare, Anti-Submarine Warfare, Expeditionary Warfare, Mine Warfare, and a portion of Surface Warfare. This correction does not change NMFS' analysis or conclusions in the proposed rule. Table 4 is corrected to read as follows: