

(c) Vessels carrying “Certain Dangerous Cargo” (CDC) as defined in the United States Coast Guard regulations 33 CFR 160.202, which is the same as the definition in the Transport Canada “Marine Transportation Security Regulations” (MTSR’s), shall report the “Certain Dangerous Cargo” to the nearest Seaway station prior to a Seaway transit.

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■ 13. In appendix I to subpart A, revise the Caution statement to read as follows:

Appendix I to Subpart A of Part 401—Vessel Dimensions

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Caution: Masters must take into account the ballast draft of the vessel when verifying the maximum permissible dimensions. Bridge wings, antennas, masts and, in some cases, the samson posts or store cranes could be outside the limits of the block diagram and could override the lock wall. Masters and pilots must take this into consideration and exercise extreme caution when entering or exiting locks to ensure that the vessel does not contact any of the structures on the lock.

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Issued at Washington, DC, on March 10, 2016.

Saint Lawrence Seaway Development Corporation.

Carrie Lavigne,
Chief Counsel.

[FR Doc. 2016–05798 Filed 3–14–16; 8:45 am]

BILLING CODE 4910–61–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1802, 1804, 1805, 1806, 1807, 1808, 1811, 1813, 1814, 1815, 1822, 1824, 1825, 1828, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1839, 1841, 1843, 1844, 1847, 1849, 1850, 1851, and 1852

RIN 2700–AE01 and 2700–AE09

NASA Federal Acquisition Regulation Supplement; Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Correcting amendments.

SUMMARY: The National Aeronautics and Space Administration (NASA) published a final rule in the **Federal Register** on Thursday, March 12, 2015 (80 FR 12935), as part of the NASA Federal Acquisition Regulation Supplement (NFS) regulatory review. That final rule contained errors that need to be corrected.

DATES: *Effective:* March 15, 2016.

FOR FURTHER INFORMATION CONTACT: Manuel Quinones, NASA, Office of

Procurement, Contract and Grant Policy Division, via email at manuel.quinones@nasa.gov, or telephone (202) 358–2143.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a final rule in the **Federal Register** on March 12, 2015, which became effective April 13, 2015. This rule is part of the NASA FAR Supplement regulatory review. As published, the rule contained errors that require the following changes:

- Revise section 1845.107–70(a)(1) to correct the title of the prescribed clause to “Contractor Requests for Government-furnished Property.”
- Revise section 1852.227–70 clause title to “NEW TECHNOLOGY—OTHER THAN A SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION.”
- Revise section 1852.245–70 clause title to “Contractor Requests for Government-furnished Property.”
- Update the authority citation of several NFS parts.

List of Subjects in 48 CFR Parts 1802, 1804, 1805, 1806, 1807, 1808, 1811, 1813, 1814, 1815, 1822, 1824, 1825, 1828, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1839, 1841, 1843, 1844, 1847, 1849, 1850, 1851, and 1852

Government procurement.

Manuel Quinones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1802, 1804, 1805, 1806, 1807, 1808, 1811, 1813, 1814, 1815, 1822, 1824, 1825, 1828, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1839, 1841, 1843, 1844, 1847, 1849, 1850, 1851, and 1852 are amended as follows:

PARTS 1802, 1804, 1805, 1806, 1807, 1808, 1811, 1813, 1814, 1815, 1822, 1824, 1825, 1828, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1839, 1841, 1843, 1844, 1847, 1849, 1850, 1851, and 1852—[AMENDED]

- 1. The authority citation for parts 1802, 1804, 1805, 1806, 1807, 1808, 1811, 1813, 1814, 1815, 1822, 1824, 1825, 1828, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1839, 1841, 1843, 1844, 1847, 1849, 1850, 1851, and 1852 is revised to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1845—GOVERNMENT PROPERTY

1845.107–70 [Amended]

- 2. Amend section 1845.107–70(a)(1) by removing “Government-Provided

Property” and adding “Government-furnished Property” in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.227–70 [Amended]

- 3. Amend section 1852.227–70 by removing “NEW TECHNOLOGY” and adding “NEW TECHNOLOGY—OTHER THAN A SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION” in its place.

- 4. Revise section 1852.245–70 heading and title of the clause to read as follows:

1852.245–70 Contractor requests for Government-furnished equipment.

* * * * *

CONTRACTOR REQUESTS FOR GOVERNMENT-FURNISHED PROPERTY (AUG 2015)

* * * * *

[FR Doc. 2016–05803 Filed 3–14–16; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2404, 2406, 2408, 2409, 2411, 2415, 2427, 2428, 2432, 2437, 2444, and 2452

[Docket No. FR–5814–F–02]

RIN 2501–AD73

Amendments to the HUD Acquisition Regulation (HUDAR)

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the HUDAR to implement miscellaneous changes necessary to update the HUDAR. These changes include a correction to the designation of Source Selection Authorities, limited delegation of Head of Contracting Activity authorities, incorporation of the HUDAR Matrix, addition of new clauses including clauses relating to labor categories and prices per hour, and post-award conferences. HUD is transitioning to the Department of Treasury’s Bureau of Fiscal Services’ Invoice Platform Processing System (IPP), and this final rule revises clauses related to payments and invoicing to take into account both the situations where invoicing and payment will not be made through the IPP and where invoices are required to be submitted electronically through the IPP. This final rule also clarifies that where funding has been made available for a contract, and the limit of the

funding has been reached or the necessary funding modification is not in place, the contractor must stop performing work and may not start again until notified through a contract funding modification that funds are available to continue work. This final rule also modifies the proposed provision on post-award conferences to limit the clause to cases where a conference is required, and provides an alternate clause for attendance at such conferences via telephone or video conference. The rule makes certain administrative corrections, and incorporation of alternates to various clauses to allow for electronic invoicing.

DATES: *Effective:* April 14, 2016.

FOR FURTHER INFORMATION CONTACT: Lisa D. Maguire, 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) and fax number 202-708-8912. Persons with hearing or speech impairments may access Ms. Maguire's telephone number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The May 28, 2015, Proposed Rule

The Federal Acquisition Regulation (FAR), which governs the procurement of property and nonpersonal services by the government, is authorized by the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 101 *et seq.* Pursuant to regulations of the General Services Administration under the authority of 40 U.S.C. 121(c) of the same Act, the FAR provides at 48 CFR 1.301 for agencies to issue their own acquisition regulations to implement or supplement the FAR. HUD's acquisition regulation (HUDAR) is found at 48 CFR chapter 24.

On May 28, 2015, HUD proposed revising certain sections prescribing contract clauses, and certain of the clauses and alternates, in the HUDAR (80 FR 30416). Many of these corrections were administrative or technical in nature, such as correcting references to contract clauses, designating certain forms to be used for specific purposes, and delegating certain functions to specific positions within the agency.

For example, the rule proposed designating the Deputy Chief Procurement Officer as the responsible official with the authority to approve, in writing, justifications for other than full

and open procurements for proposed contracts over \$13.5 million, but not exceeding \$68 million (2406.304(a)(3)); and justifications for Limited Source considerations for proposed Federal Supply Schedule order or Blanket Purchase Agreement (BPA) in the same estimated contract price range (2408.405-6(d)(3)). The rule also proposed designating HUD Assistant Secretaries, or their equivalent, as the Source Selection Authorities for selections made using the tradeoff process (2415.303(a)(1)) and to allow Assistant Secretaries to delegate this function to other departmental officials. There is an exception for procurements of legal services, in which case the General Counsel is designated as the source selection authority (2415.303(a)(2)).

The rule proposed adding requirements concerning information to be collected by the Contracting Officer to determine a contractor's financial responsibility. The rule proposed adding a clause on consent to subcontract, applicable to contracts and task orders exceeding \$10,000,000 in value (2452.244-70).

The rule proposed several administrative corrections, including: revising section 2404.7001 to refer to the correct contract clause 2452.204-70, "Preservation of, and Access to, Contract Records (Tangible and Electronically Stored Information (ESI) Formats)," and removing the title and redesignating the clause that is codified at section 2432.705-70 as 2432.705-70(a).

In part 2406, the rule proposed adding section 2406.303 which requires the use of HUD Form 24012¹ for justifications for other than full and open competition.

The rule also proposed to:

Clarify section 2415.305(a)(5) to apply to Best Value Tradeoff technical evaluations;

Codify a class deviation approved by HUD's Chief Procurement Officer dated April 10, 2013 to add Alternate 1 to clauses 2452.232-70 and 2452.232-71. These alternate clauses would provide for electronic invoicing by email;

Add clause 2452.232-74, entitled "Not to Exceed Limitation," and, in part 2432, add a reference to that clause and requirements regarding its use at section 2432.705;

Revise clause 2452.237-77(c)(1)(A) to change "21 days per month" to "number of business days in the month", and to make a technical fix;

Add clause 2452.237-79, "Post-Award Conference," and a reference to that clause and requirements regarding its use at section 2437.110(e)(5). The clause as proposed

would have been required in all contracts for services;

Add clause 2452.237-81, "Labor Categories, Unit Prices Per Hour and Payment," and a reference to that clause and requirements regarding its use at section 2437.110(e)(6). This clause would specify the types of labor to be supplied by the contractor and the price per hour.

Finally, the proposed rule incorporated a new HUDAR matrix under subpart 2452.3. The matrix provides a quick reference for information about each clause or provision, including whether it is required, required when applicable, or optional for the various types of contracts.

B. This Final Rule

This final rule follows publication of the May 28, 2015 proposed rule. HUD received no public comments on the proposed rule. However, HUD is making two related changes to the post-award conference provision and contract clause.

This final rule clarifies a point that was unclear as to incremental funding. In section 2432.703-1, as it currently is codified, the HUDAR regulation states that a fixed-price contract may be funded incrementally if the conditions in paragraph (b)(1)(i) and (b)(1)(ii)(A), (B), and (C) are met, or if the condition in (b)(1)(iii) is met (that the contract uses funds available from 2 or more fiscal years and Congress has otherwise authorized incremental funding). This is actually not quite correct. While it is correct that the conditions in (b)(1)(i) and (ii) and their subordinate paragraphs apply, if the condition in (b)(1)(iii) is applicable, it applies as well; in other words, where (b)(1)(iii) is applicable, it and all the other conditions apply; it is not an alternative to the other clauses. This final rule makes this applicability of (b)(1)(iii) more clear.

In the provision at 2437.110(e)(5), where the proposed rule required the post-award conference clause to be used in all contracts for services, the final rule modifies this provision so that the clause will be used only when the contractor will be required to attend a post-award conference. In other cases, the clause is unnecessary, and this change will reduce burden in those cases. The clause itself, at 2452.237-79, is revised to add an alternate clause for use when the post-award conference will be conducted via telephone or video conferencing. This is consistent with other revisions to provide for the use of electronic communications in this rule (such as the alternate clauses for electronic invoicing) and recognizes

¹ See <http://portal.hud.gov/hudportal/documents/huddoc?id=24012.pdf>.

the increasing use of such communications. The matrix is also revised to reflect these changes.

Because HUD is now transitioning to the Department of Treasury's Bureau of Financial Services Invoice Processing Platform (IPP) system, clauses 2452.232-70 and 2452.232-71 are revised to add material relevant to the IPP in this final rule. In clause 2452.232-70, which covers invoice submission for fixed price contracts, the first clause listed is for the case where invoicing and payments will not be made through the IPP system, and this clause is similar to the proposed main clause through paragraph (d). Alternate I, as proposed, is for electronic submission of invoices via email in fixed price contracts other than performance-based contracts under which performance based payments will be used. Alternate I in this final rule covers the same subject, and is similar to the proposed rule, where the invoices will be submitted electronically by email but not submitted through the IPP system. New in this final rule is Alternate II, which covers the situation where, in all fixed price solicitations and contracts, invoices are required to be submitted electronically through the IPP system.

A similar change to account for the transition to the IPP system is also made in this final rule to clause 2452.232-71, which covers voucher submission for cost reimbursement, time-and-materials, and labor-hour contracts. As with the previous clause, the main clause and Alternate I deal, respectively with paper submission and electronic submission in cases where the IPP is not being used, and are essentially similar to the same clauses as proposed with the exception that the proviso that it applies where vouchering and payments will not be made through the IPP. This final rule adds Alternate II to cover all cost-reimbursement, time-and-materials, and labor-hour type solicitations and contracts when requiring vouchers to be submitted electronically to the IPP system. These transitional provisions simply update procedures to allow contracting to continue as HUD transitions to the IPP.

The proposed clause 2452.232-74, entitled "Not to Exceed Limitation," is revised to clarify a particular point. The proposed rule provided that a contract states a specific amount of funding available for the performance of work, and that the government shall not order, nor the contractor be required, to perform work that exceeds the funding limit, and that the government may unilaterally increase the amount of funding obligated through contract

modifications until the full contract value has been obligated. The proposed rule did not state what is required in the case where all the contract funding is not yet obligated but a particular funding limit has been reached and a contract modification is needed to provide additional funding. This final rule clarifies that if a necessary modification is not yet in place, or the work has reached the stated funding limit, the contractor must stop performance and may not start again until notified through a contract funding modification that funds are available.

The rule is being made final with no other changes from the proposed rule.

II. 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 2404

Government procurement.

48 CFR Part 2406

Government procurement.

48 CFR Part 2408

Government procurement.

48 CFR Part 2409

Government Procurement.

48 CFR Part 2411

Government Procurement.

48 CFR Part 2415

Government procurement.

48 CFR Part 2432

Government procurement.

48 CFR Part 2437

Government procurement.

48 CFR Part 2444

Government procurement.

48 CFR Part 2452

Government procurement.

For the reasons discussed in the preamble, and pursuant to the authority

under 42 U.S.C. 3535(d), HUD amends 48 CFR chapter 24 as follows:

PART 2404—ADMINISTRATIVE MATTERS

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

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

Subpart 2404.7—Contractor Records Retention

- 2. Revise section 2404.7001 to read as follows:

2404.7001 Contract clause.

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

PART 2406—COMPETITION REQUIREMENTS

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

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

Subpart 2406.3—Other Than Full and Open Competition

- 4. Add section 2406.303 to read as follows:

2406.303 Justifications.

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

- 5. In section 2406.304, add paragraph (a)(3) to read as follows:

2406.304 Approval of the justification.

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

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PART 2408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

- 6. The authority citation for part 2408 is revised to read as follows:

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

- 7. Add subpart 2408.4 to read as follows:

Subpart 2408.4—Federal Supply Schedules

Sec.

2408.404 Pricing.

2408.405–6 Limiting sources.

2408.404 Pricing.

(d) Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair). GSA has determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, to be fair and reasonable for the purpose of establishing the schedule contract. GSA’s determination does not relieve the ordering activity Contracting Officer from the responsibility of making a determination of fair and reasonable pricing for individual orders, BPAs, and orders under BPAs. Contracting Officers shall follow the general principles and techniques outlined in FAR Section 15.404–1, Proposal Analysis Techniques, to ensure that the final agreed-to price is fair and reasonable, keeping in mind that the complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

2408.405–6 Limiting sources.

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

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

PART 2409—CONTRACTOR QUALIFICATIONS

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

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

- 9. Add subpart 2409.1, consisting of section 2409.105, to read as follows:

Subpart 2409.1—Responsible Prospective Contractors

2409.105 Procedures.

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

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

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

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

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

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

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

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

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

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

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

(c) The Contracting Officer shall obtain the following information to the extent required to protect the Government’s interest. In addition, if the Contracting Officer concludes that information not listed herein is required to determine financial responsibility,

that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the Contracting Officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

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

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

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

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

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

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

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

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

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that—

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

(ii) Is reconcilable to indirect cost rate projections.

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

(7) Financing arrangement information that discloses—

(i) Availability of cash to finance contract performance;

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

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

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

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or

creditor subordinations/repayment suspensions.

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

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

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

(ii) Insurance, when relevant to the contract;

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

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

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

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

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

PART 2411—[REMOVED AND RESERVED]

■ 10. Under the authority of 40 U.S.C. 121(c), part 2411 is removed and reserved.

PART 2415—CONTRACTING BY NEGOTIATION

■ 11. The authority citation for part 2415 is revised to read as follows:

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

Subpart 2415.2—Solicitation and Receipt of Proposals and Quotations

■ 12. In section 2415.209, revise paragraph (a)(1) 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 expected to exceed the simplified acquisition limit. The provision may be used in simplified acquisitions when it is necessary to obtain business proposal information in making the award selection. If the proposed contract requires work on, or access to, HUD systems or applications

(see the clause at 2452.239–70), the provision shall be used with its Alternate I. When the Contracting Officer has determined that it is necessary to limit the size of the technical and management portion of offers submitted by offerors, the provision shall be used with its Alternate II.

* * * * *

Subpart 2415.3—Source Selection

■ 13. In section 2415.303, revise paragraph (a) to read as follows:

2415.303 Responsibilities.

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

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

* * * * *

■ 14. In section 2415.305, revise paragraph (a)(3) to read as follows:

2415.305 Proposal evaluation.

(a) * * *

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

shall not be employed. A technical evaluation report, which complies with FAR 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.

PART 2432—CONTRACT FINANCING

■ 15. The authority citation for part 2432 continues to read as follows:

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

Subpart 2432.7—Contract Funding

■ 16. In section 2432.703, revise paragraph (b)(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; and

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

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

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

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

* * * * *

■ 17. Revise section 2432.705 to read as follows:

2432.705 Contract clauses.

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

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

2432.705–70 [Removed]

■ 18. Remove section 2432.705–70.

PART 2437—SERVICE CONTRACTING

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

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

Subpart 2437.1—Service Contracts—General

■ 20. In section 2437.110, revise paragraph (e)(2) and add paragraphs (e)(5) and (6) to read as follows:

2437.110 Solicitation provisions and contract clauses.

(e) * * *

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

* * * * *

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

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

■ 21. Add part 2444, consisting of subpart 2444.2, to read as follows:

PART 2444—SUBCONTRACTING POLICIES AND PROCEDURES

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

Subpart 2444.2—Contract Clauses

2444.204 Contract clauses.

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

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 22. 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

§ 2452.211–70 [Removed]

■ 23. Remove section 2452.211–70.

■ 24. Revise section 2452.215–70 to read as follows:

2452.215–70 Proposal content.

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

PROPOSAL CONTENT (MAR 2016)

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

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

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

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

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

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

Alternate I (MAR 2016)

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

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

Alternate II (MAR 2016)

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

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

(2) A page shall consist of one side of a single sheet of 8½” x 11” paper, single spaced, using not smaller than 12 point type font, and having margins at the top, bottom,

and sides of the page of no less than one inch in width.

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

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

■ 25. Revise section 2452.232-70 to read as follows:

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

As prescribed in HUDAR Section 2432.908(c)(2), insert the following clause in all fixed price solicitations and contracts where invoicing and payments will NOT be made through the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

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

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

[Contracting Officer insert schedule information]:

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

[Continue as necessary]

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

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

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

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

Alternate I (MAR 2016).

As prescribed in HUDAR section 2432.908(c)(2), replace paragraph (b)(1) and (b)(2) with the following Alternate I

paragraphs to HUDAR Clause 2452.232-70 Payment Schedule and Invoice Submission (Fixed-price) for fixed price solicitations and contracts other than performance-based under which performance-based payments will be used and where invoices are to be submitted electronically by email but will not be paid through the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

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

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

Alternate II (MAR 2016).

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

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

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

■ 26. Revise section 2452.232-71 to read as follows:

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

As prescribed in HUDAR Section 2432.908(c)(3), insert the following clause in all cost reimbursable, time-and-materials, and labor-hour

solicitations and contracts where vouchering and payments will NOT be made through the Department of Treasury's Bureau of Fiscal Services Invoice Processing Platform (IPP) system:

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

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

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

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

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

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

Alternate I (MAR 2016).

As prescribed in HUDAR section 2432.908(c)(3), replace paragraphs (a)(1) and (2) with the following Alternate I paragraphs to HUDAR Clause 2452.232-71, Voucher Submission in time and material, cost-reimbursable and labor hour 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 Government Technical Representative (GTR). In addition to the items required by the clause at FAR 52.232- 25, Prompt Payment, the voucher shall show the elements of cost for the billing period and the cumulative

costs to date. The contractor shall clearly include in the Subject line of the email: VOUCHER INCLUDED; CONTRACT/ORDER #: _____, VOUCHER NUMBER _____ and Contract Line Item Number(s) _____.

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

Alternate II (MAR 2016).

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

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

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

(End of Alternate II)

■ 27. Add section 2452.232-74 to read as follows:

2452.232-74 Not to exceed limitation.

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

NOT TO EXCEED LIMITATION (MAR 2016)

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

(b) When funding is available, the Government may unilaterally increase the amount obligated through contract funding modification(s) until the full contract value has been obligated. If a contract funding modification is not in place by the time the

performance of the work or deliveries have reached the stated funding limit, the contractor must stop performing services and deliveries and may not start again until the contractor is notified through a contract funding modification that funds are available to continue services and deliveries.
(End of clause)

■ 28. Revise section 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 (MAR 2016)

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

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

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

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

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

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

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

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

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

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

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

■ 29. In section 2452.237-77, revise the introductory text, add paragraph (a)(1), and revise paragraph (c)(1)(A) 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 (MAR 2016)

(a)(1) The Department of Housing and Urban Development observes the following days as holidays—
New Year's Day
Martin Luther King's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order or Presidential Proclamation.

* * * * *

(c) * * *

(1) * * *

(A) The deduction rate in dollars per day will be equal to the per month contract price divided by the number of business days in each month.

* * * * *

■ 30. Add section 2452.237-79 to read as follows:

2452.237-79 Post award conference.

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

POST AWARD CONFERENCE (MAR 2016)

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

POST AWARD CONFERENCE (MAR 2016)

Alternate I

If the conference will be conducted via telephone or video conferencing, substitute the following for the first and second sentences:

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

■ 31. Add section 2452.237-81 to read as follows:

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

As prescribed in 2437.110(e)(6), insert the following clause in all indefinite quantity and requirements solicitations and contracts when level of effort task orders will be issued.

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

The contractor shall provide the following types of labor at the corresponding unit price

per hour in accordance with the terms of this contract:

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

■ 32. 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 (MAR 2016)

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

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

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

“Mission-critical system” means an information technology or telecommunications system used or operated by HUD or by a HUD contractor, or organization on behalf of HUD, that processes any information, the loss, misuse, disclosure, or unauthorized access to, or modification of which would have a debilitating impact on the mission of the agency.

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

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

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

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

(j) *Access to contractor's systems.* The Contractor shall afford authorized personnel, including the Office of Inspector General, access to the Contractor's facilities, installations, operations, documentation (including the compliance matrix required under paragraph (i)(2) of this clause), databases, and personnel used in performance of the contract. Access shall be

provided to the extent required to carry out, but not limited to, any information security program activities, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of HUD data and systems, or to the function of information systems operated on behalf of HUD, and to preserve evidence of computer crime.

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

(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)

■ 33. Add section 2452.244-70 to read as follows:

2452.244-70 Consent to subcontract.

As prescribed in HUDAR Section 2444.204(a), insert the following clause in contracts and task orders with an estimated value exceeding \$10,000,000.

Consent to Subcontract (Mar 2016)

(a) Due to the substantive nature of subcontracting that may be necessary during performance of this contract, the Contracting Officer has determined that a consent for individual subcontracts is required to adequately protect the Government. Consent is required for –

(1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts, or combination of such, in excess of \$150,000 per year to a single subcontractor or consultant;

(2) Fixed price subcontracts in excess of 25% of the annual contract value to a single subcontractor or consultant.

(b) If subcontracts meeting the above parameters were not provided during the negotiation of the original contract award, the Contractor shall obtain post award consent and provide signed copies of the subcontract agreements within 10 days of consent.

(c) The Contractor shall provide the Contracting Officer with 30 days advance notification prior to changing subcontracts or existing subcontracting agreements, unless precluded due to circumstances beyond the control of the contractor. If advance notification is not feasible, the Contractor shall provide notification to the Contracting Officer no later than 10 days after the Contractor identifies the need to replace a subcontractor. The notification shall include a copy of the proposed new subcontracting agreement. Upon consent and finalization of the final subcontract agreement, the Contractor shall provide a copy of the signed agreement to the Contracting Officer.

(d) The Contracting Officer's consent to a subcontract does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs.

(e) If not required elsewhere in the contract, no more than 30 calendar days after award, the Contractor shall provide a

separate continuity of services plan to the Contracting Officer that will ensure services performed by subcontractors that cost more than 25% of the cost/price of the contract will continue uninterrupted in the event of performance problems or default by the subcontractor.

(End of clause)

Subpart 2452.3—Matrix

■ 34. Add subpart 2452.3, consisting of section 2452.3, to read as follows:

2452.3 Provision and clause matrix.

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Information Technology Virus Security																						
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		O	RA	RA
Alternate I	2442.1107	C	F				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	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: March 1, 2016.
Nani A. Coloretti,
Deputy Secretary.
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