

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2409, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2419, 2420, 2426, 2428, 2429, 2432, 2434, 2436, 2437, 2442, 2452 and 2453**

[Docket No. FR-3887-F-02]

RIN No. 2535-AA23

**Office of the Assistant Secretary for Administration; HUD Acquisition Regulation; Field Reorganization, Streamlining, and Simplification**

**AGENCY:** Office of the Assistant Secretary for Administration, HUD.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The purpose of this final rule is to amend the HUD Acquisition Regulation (HUDAR) to: implement the Department's Field reorganization, particularly the establishment of the Administrative Service Centers; implement the Federal Acquisition Streamlining Act of 1994 (FASA); augment Departmental efforts to streamline and simplify the procurement process by removing unnecessary restrictions; make technical amendments to the interim rule; and, correct obsolete references.

**EFFECTIVE DATE:** May 31, 1996.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 9, 1985 (50 FR 42097); and the general authorization in FAR 1.301.

On September 5, 1995 (60 FR 46152), the Department published an interim rule to amend the HUDAR to update existing coverage with respect to the Department's structure and organizational responsibilities, to implement the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103-355, approved October 13, 1994), and to streamline Departmental procurement practices. This rule responds to public comment on the interim rule, and issues it as a final rule. This rule also removes unnecessary restrictions and corrects obsolete references.

**Public Comments**

During the public comment period, one comment was received on the interim rule.

The commenter expressed concern regarding the language at § 2415.608(a)(2), which permits the identification of proposals submitted in a best value procurement as being either "acceptable", "unacceptable but capable of being made acceptable", or "unacceptable." The interim rule stated, "However, under solicitations where mandatory requirements are established, those proposals that do not meet the mandatory requirements may be found unacceptable without further review."

The commentator pointed out that this practice seems to set up a dichotomy between best value procurements and those with mandatory requirements, as though they are mutually exclusive. The commentator stated that if a proposal fails to meet a minimum requirement, it could be rejected as "unacceptable" without further review, which contradicted the ability to identify a proposal as "unacceptable but capable of being made acceptable." The commentator stated that presumably, there will be many proposals that fail to meet one or more mandatory requirements in the initial round, but which, through minor clarification or even discussions, could easily be corrected to meet any such requirement. The commentator recommended that the language in the last sentence of § 2415.608(a)(2) either be revised to be consistent with the preceding coverage, or deleted altogether.

HUD agrees with the commentator and has deleted the last sentence of § 2415.608(a)(2) in the final rule. The language as written in the interim rule could, to some extent, limit the Department's ability to select the best contractor. Potentially, the initial proposal representing the best value could be rejected as "unacceptable" for failing to meet a mandatory requirement of the solicitation, when the deficiency could possibly be corrected through

minor clarification or discussions. Such a proposal may represent an outstanding offer in all other respects, but under the interim rule, it would have been rejected as "unacceptable". Requiring the Department to reject as "unacceptable" any proposal that fails to meet a solicitation's mandatory requirements appears to defeat the purpose of a best value procurement. Removal of the last sentence resolves this problem. In addition, § 2415.608(a)(2) and (3) are merged and redesignated as § 2415.608(a)(3) to conform to a corresponding FAR change.

**Additional Changes**

The following changes are also made by this rule:

HUDAR 2401.102 through 2401.105 are redesignated as 2401.103 through 2401.106, respectively, to conform to corresponding FAR structure recently published as FAC 90-29, effective July 3, 1995. The heading titles and regulation text are unchanged.

HUDAR 2409.508 through 2409.508-2 are redesignated as 2409.507 through 2409.507-2, respectively, to conform to the corresponding FAR structure. The regulation text is unchanged.

HUDAR part 2412, *Contract delivery performance*, is redesignated as part 2411 and retitled to conform to the revised corresponding FAR structure published as FAC 90-32, effective October 1, 1995.

HUDAR 2412.1, *Delivery or performance schedules*, is redesignated as § 2411.4 to conform to the revised FAR structure published as FAC 90-32, effective October 1, 1995. The regulation text is unchanged.

HUDAR 2412.104, *Contract clause*, is redesignated as § 2411.404 to conform to the revised FAR structure published as FAC 90-32, effective October 1, 1995. The text is revised to simplify the prescriptive language.

HUDAR 2413.106-2 is revised to reflect the changed procurement method name.

HUDAR 2413.505-1 is revised to authorize the use of Form HUD-2542, Purchase Order and Payment Authorization, for any purchase using simplified acquisition procedures charged to the FHA Fund, and to remove information that is internal in nature.

HUDAR 2414.406, *Mistakes in bids*, is redesignated as § 2414.407 to conform to the FAR structure revision published as FAC 90-29, effective July 3, 1995.

HUDAR 2414.406-3, *Other mistakes disclosed before award*, is redesignated as § 2414.407-3 to conform to the FAR structure revision published as FAC 90-

29, effective July 3, 1995. The regulation text is unchanged.

HUDAR 2414.406-4, *Mistakes after award*, is redesignated as § 2414.407-4 to conform to the FAR structure revision published as FAC 90-29, effective July 3, 1995. The regulation text is revised to clarify that the concurrence of counsel should be obtained at headquarters or the field, depending on the location of the contracting activity.

The heading HUDAR 2414.408, *Award*, is added to conform to the FAR structure revision published as FAC 90-29, effective July 3, 1995.

HUDAR 2414.407-70, *Award when only one bid is received*, is redesignated as § 2414.408-70 to conform to the revised FAR structure published in FAC 90-29, effective July 3, 1995. The regulation text is unchanged.

HUDAR 2415.407, *Solicitation provisions*, contains numerous revisions to remove unnecessary restrictions, simplify the prescriptive language, tailor proposal content to the specific solicitation, and reduce paperwork burdens placed on offerors. The revisions will give contracting officers more latitude when requesting other than certified cost or pricing data in accordance with FAR 15.804-5(a)(2), and will clarify distinctions in procedures when using the "lowest-priced technically acceptable proposal" or "best value" approach to source selection.

HUDAR 2415.413-1, *Alternate I*, is amended to eliminate unnecessarily restrictive requirements regarding the evaluation of proposals. This revision will allow the Department the flexibility to have proposal evaluations performed by the most competent technical and management sources available.

HUDAR 2415.413-2, *Alternate II*, is added to establish a procedure consistent with the FAR for instances when it is necessary for external parties to evaluate proposals to meet the Department's evaluation needs.

In HUDAR 2415.605, *Evaluation factors*, paragraphs (c) and (e) are renumbered to conform to the revised FAR structure published as FAC 90-31, effective October 1, 1995.

HUDAR 2415.1004, *Protests against award*, is renumbered to conform to the revised FAR structure published as FAC 90-31, effective October 1, 1995. The text of the regulation is unchanged.

HUDAR 2416.504, *Indefinite-quantity contracts*, is renumbered to § 2416.506, and the title is revised to *Solicitation provisions and contract clauses*, to conform to recent FAR changes published in the Federal Register September 26, 1995 as FAC 90-33, effective October 1, 1995. Paragraph (e)

is redesignated as a new section, § 2416.506-70, *Unpriced delivery/task orders*, to more accurately reflect the text. The text of the regulation is unchanged.

HUDAR subpart 2417.2, *Options*, and § 2417.204(e), *Contracts*, are added in accordance with FAR 17.204(e) to give the Department more flexibility for the acquisition of supplies or services and to establish the Senior Procurement Executive as the approving official for solicitations and contracts where the total of the basic and option periods exceed 5 years.

HUDAR part 2419, *Small business and small disadvantaged business concerns*, is retitled to conform to the revised FAR structure published as FAC 90-32, effective October 1, 1995.

HUDAR 2419.201, *General policy*, contains numerous revisions to include reference to women-owned small businesses to conform to corresponding revisions in the FAR published as FAC 90-32, effective October 1, 1995.

HUDAR subpart 2419.7, *Subcontracting with small businesses and small disadvantaged business concerns*, is retitled to conform to the revised FAR structure published as FAC 90-32, effective October 1, 1995. The regulation text is unchanged.

HUDAR subpart 2419.9, *Contracting opportunities for women-owned small businesses*, is removed in its entirety to conform to corresponding FAR changes published as FAC 90-32, effective October 1, 1995.

HUDAR part 2420, *Labor surplus area concerns*, is removed in its entirety and reserved to conform to the revised FAR structure published as FAC 90-32, effective October 1, 1995.

HUDAR 2434.001, *Definition*, is removed in its entirety. The threshold for major system acquisitions is addressed in internal directives.

In HUDAR 2437.110, *Solicitation provisions and contract clauses*, paragraph (f) is revised by removing the last sentence to simplify the prescriptive language. The forms identified in the clause prescription are specified in the clause and do not also need to be in the prescription.

To remove unnecessary restrictions and reduce burdens on contractor and HUD personnel, the dollar threshold for requiring HUD Form 441.1, "Project Management System Baseline Plan", contained in HUDAR 2442.1106, *Reporting requirements*, is increased from \$100,000 to \$500,000. In addition, the text is revised to allow the use of the prescribed forms for contracts under \$500,000, when determined necessary by the Contracting Officer.

Accordingly, the prescription at HUDAR 2442.1107, *Contract clause*, is revised to reflect the increased dollar threshold of \$500,000.

HUDAR 2452.212-70, *Contract period*, is renumbered to conform to the revised FAR structure published as FAC 90-32, effective October 1, 1995. The text of the regulation is corrected to cite the renumbered HUDAR reference and revised to simplify the prescriptive language.

HUDAR 2452.215-70, *Proposal content and outline*, is revised to eliminate unnecessary restrictions and simplify the basic provision concerning proposal content. A new Alternate I is added for procurements using the lowest-priced technically acceptable approach to source selection. A new Alternate II is added for situations where the proposed contract requires work on, or access to, sensitive automated systems.

HUDAR 2452.219-70, *Small business and small disadvantaged business subcontracting plan*, is retitled and the text is revised to include women-owned small businesses to conform to recent FAR changes published as FAC 90-32, effective October 1, 1995, to eliminate repetition and clarify the content of Alternate I.

HUDAR 2452.237-75, *Clearance of personnel*, paragraph (a), is amended to revise the forms to be submitted in the event contractor personnel will be working on-site in any HUD office. The forms originally specified have changed and this amendment merely revises the paragraph to reflect the correct forms. Paragraphs (b) and (c) of the section remain unchanged.

The prescriptive language at HUDAR 2452.242-71, *Project management system*, is revised to correspond to the clause prescription at HUDAR 2442.1107. The text of the clause remains unchanged.

#### Other Matters

##### *Paperwork Reduction Act*

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

##### *Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on

Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to the performance of accounting, auditing and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely makes amendments to the Department's acquisition regulations that simplify HUD's procurement process, revise internal HUD component references, and implement FAR revisions without adding additional requirements.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule makes technical revisions and corrections to the agency's regulations. As a result, the rule is not subject to review under the Order.

#### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves Departmental procurement procedures only.

List of Subjects in 48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2409, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2419, 2420, 2426, 2428, 2429, 2432, 2434, 2436, 2437, 2442, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24, of the Code of Federal Regulations is amended by adopting as final the interim rule published on September 5, 1995 (60 FR 46152), with the following changes:

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

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

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

#### **2401.105 [Redesignated]**

2. Section 2401.105 is redesignated as 2401.106.

#### **2401.104–2 [Redesignated]**

3. Section 2401.104–2 is redesignated as 2401.105–2.

#### **2401.104 [Redesignated]**

4. Section 2401.104 is redesignated as 2401.105.

#### **2401.103 [Redesignated]**

5. Section 2401.103 is redesignated as 2401.104.

#### **2401.102 [Redesignated]**

6. Section 2401.102 is redesignated as 2401.103.

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

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

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

#### **2409.508 [Redesignated]**

8. Section 2409.508 is redesignated as 2409.507.

#### **2409.508–1 [Redesignated]**

9. Section 2409.508–1 is redesignated as 2409.507–1.

#### **2409.508–2 [Redesignated]**

10. Section 2409.508–2 is redesignated as 2409.507–2.

### **PART 2412—CONTRACT DELIVERY OR PERFORMANCE**

11. The authority citation for part 2412 is revised to read as follows:

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

#### **Part 2412 [Redesignated]**

12. Part 2412 is redesignated as Part 2411 and the heading is revised to read as follows:

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

#### **2411.1 [Redesignated]**

13. Newly designated subpart 2411.1 is redesignated as 2411.4.

#### **2411.104 [Redesignated]**

14. Newly designated 2411.104 is redesignated as 2411.404 and revised to read as follows:

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

(a) The Contracting Officer may insert the clause at 48 CFR 2452.211–70, Contract Period, in all solicitations and contracts.

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

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

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

16. Section 2413.106–2 is revised to read as follows:

#### **2413.106–2 Data to support purchases.**

(d) Contracting officers may use Form HUD–24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a purchase using simplified acquisition procedures, including recording written and oral quotations received and documenting orders against GSA contracts.

17. Section 2413.505–1 is revised to read as follows:

#### **2413.505–1 Optional Form (OF) 347, order for supplies and services, and Optional Form 348, order for supplies and services schedule-continuation.**

(b) For purchases charged to the FHA Fund using simplified acquisition procedures, contracting officers may use Form HUD–2542, Purchase Order and Payment Authorization.

### **PART 2414—SEALED BIDDING**

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

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

#### **2414.406 [Redesignated]**

19. Section 2414.406 is redesignated as 2414.407.

#### **2414.406–3 [Redesignated]**

20. Section 2414.406–3 is redesignated as 2414.407–3.

#### **2414.406–4 [Redesignated]**

21. Section 2414.406–4 is redesignated as 2414.407–4, and revised to read as follows:

#### **2414.407–4 Mistakes after award.**

(d) For determinations under FAR 14.407–4(b) (1) and (2), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

22. A new section, "2414.408 Award," is added immediately following redesignated 2414.407–4, to read as follows:

**2414.408 Award.****2414.407-70 [Redesignated]**

23. Section 2414.407-70 is redesignated as 2414.408-70.

**PART 2415—CONTRACTING BY NEGOTIATION**

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

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

25. Section 2415.407 is revised to read as follows:

**2415.407 Solicitation provisions.**

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215-70, Proposal Content, in all solicitations for negotiated procurements using the best value approach selection method expected to exceed the simplified acquisition limit. The Contracting officer shall adapt paragraph (c) of the provision (i.e., include, delete, and provide additional detail to subparagraphs) to address the particular requirements of the immediate solicitation. The provision may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest-priced technically acceptable proposal method, the provision shall be used with its Alternate I. If the proposed contract requires work on, or access to, sensitive automated systems as required by the clause at 48 CFR 2452.237-76, the provision shall be used with its Alternate II.

26. Section 2415.413-1 is revised to read as follows:

**2415.413-1 Alternate I.**

It is HUD's policy to have proposals evaluated by the most competent technical and management sources available. The Department's preferred procedure for evaluation of proposals is not to disclose the proposals outside the Government for evaluation purposes. If external parties will not be used to evaluate proposals, the procedures in FAR 15.413-1 Alternate I, shall be used.

27. A new section 2415.413-2 is added to read as follows:

**2415.413-2 Alternate II.**

When it is necessary to disclose proposals outside the Government to meet the Department's evaluation needs, the procedures in FAR 15.413-2 Alternate II, shall be used.

(f)(1) The HCA is authorized to make decisions regarding the release of proposals outside the Government.

(2) The written agreement shall be obtained prior to releasing proposals to the evaluator.

(3) The HCA shall make the written determination, which shall be retained permanently in the official contract file.

**2415.605 [Amended]**

28. In section 2415.605, paragraph (c) is redesignated (d)(1) and paragraph (e) is redesignated as paragraph (d)(2).

29. In section 2415.608, paragraph (a) is revised to read as follows:

**2415.608 Proposal evaluation.**

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either 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 best value approach, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. A technical evaluation report, which complies with FAR 15.608(a)(3), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

\* \* \* \* \*

**2415.1004 [Redesignated]**

30. Section 2415.1004 is redesignated as 2415.1005.

**PART 2416—TYPES OF CONTRACTS**

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

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

**2416.504 [Redesignated]**

32. Section 2416.504 is redesignated as 2416.506 and the heading is revised to read as follows:

**2416.506 Solicitation provisions and contract clauses.**

33. In the newly redesignated section 2416.506, paragraph (e) is redesignated as section 2416.506-70 and the heading is added to read as follows:

**2416.506-70 Unpriced delivery/task orders.**

(e) \* \* \*

**PART 2417—SPECIAL CONTRACTING METHODS**

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

Authority: 31 U.S.C. 1535; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

35. A new subpart 2417.2 is added to read as follows:

**Subpart 2417.2—Options**

36. A new section 2417.204 is added to read as follows:

**2417.204 Contracts.**

(e) The Senior Procurement Executive shall approve any solicitation or contract which exceeds the five (5) year maximum for acquisitions of supplies or services.

**PART 2419—SMALL BUSINESS PROGRAMS**

37. The heading of part 2419 is revised to read as set forth above.

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

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

39. Section 2419.201(c), (d)(1) through (7) and (d)(9) are revised to read as follows:

**2419.201 General policy.**

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of HUD's small business programs. This includes Department-wide responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged and women-owned small businesses.

(d) Each head of a contracting activity shall designate a small business specialist who shall perform the following functions:

(1) Maintain a program designed to locate capable small business sources as referenced in 48 CFR 2419.201(c) for current and future procurements;

(2) Coordinate inquiries and requests for advice from such businesses on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that all such business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate

recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain participation by such businesses in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from such businesses;

(6) Advise such businesses with respect to the financial assistance available under existing laws and regulations and assist such businesses in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning such businesses participation in the procurement program;

\* \* \* \* \*

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

40. The heading of subpart 2419.7 is revised to read as follows:

**Subpart 2419.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**

Subpart 2419.9 [Removed]

41. Subpart 2419.9 is removed.

Subpart 2419.901 [Removed]

42. Section 2419.901 is removed.

**PART 2420—LABOR SURPLUS AREA CONCERNS**

43. The authority citation for part 2420 is revised to read as follows:

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

PART 2420 [REMOVED AND RESERVED]

44. Part 2420, consisting of subpart 2420.1 and § 2420.102, is removed and reserved.

**PART 2434—MAJOR SYSTEM ACQUISITIONS**

45. The authority citation for part 2434 is revised to read as follows:

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

2434.001 [Removed]

46. Section 2434.001 is removed.

**PART 2437—SERVICE CONTRACTING**

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

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

48. In § 2437.110, paragraph (f) is revised to read as follows:

**2437.110 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(f) The Contracting Officer shall insert the clause at 48 CFR 2452.237-75, Clearance of Personnel, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

\* \* \* \* \*

**PART 2442—PRODUCTION SURVEILLANCE AND REPORTING**

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

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

50. Section 2442.1106 is revised to read as follows:

**2442.1106 Reporting requirements.**

(a) All contracts for professional or technical services exceeding \$500,000 shall use HUD Form 441.1, "Project Management System Baseline Plan," to outline how the Contractor proposes to carry out the contract work and HUD Form 661.1, "Project Management System Progress Report," to monitor quantitative progress against the baseline plan. Each of these forms shall be accompanied by a narrative description. The Contracting Officer may waive the requirement to use these forms if he or she believes the Statement of Work or contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted. Contracts awarded under the Acquired Property Program are exempt from use of this reporting requirement. The prescribed forms may be used for contracts under \$500,000, when determined necessary by the Contracting Officer.

51. Section 2442.1107 is revised to read as follows:

**2442.1107 Contract clause.**

The Contracting Officer shall insert the clause at 48 CFR 2452.242-71, Project Management System, in solicitations and contracts for professional or technical services exceeding \$500,000, unless the Contracting Officer determines that the Statement of Work or technical proposal is sufficiently specific, or another acceptable method for project management is substituted. Use of this clause in contracts below the stated threshold is at the discretion of the Contracting Officer.

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

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

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

**2452.212-70 [Redesignated]**

53. Section 2452.212-70 is redesignated as § 2452.211-70 and the introductory text is revised to read as follows:

**2452.211-70 Contract period.**

As prescribed in 2411.404(a), insert the following clause in all solicitations and contracts:

\* \* \* \* \*

54. Section 2452.215-70 is revised to read as follows:

**2452.215-70 Proposal content.**

As prescribed in 2415.407(a), insert a provision substantially the same as the following:

Proposal Content (Oct 1995)

(a) Proposals shall be submitted in two parts as described in paragraphs (b) and (c) below. Each of the parts must be complete in itself so that evaluation of each part may be conducted independently, and so that the technical and management part 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) Proposals shall be submitted in original and [insert number] copies of Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management.

(1) *Prior experience.* The offeror shall provide evidence of the offeror's (i.e., firm's or organization's) prior and current experience in performing the work and/or providing the deliverables required by the solicitation.

(2) *Past Performance.* The offeror shall provide evidence of the offeror's past performance in accomplishing work—including meeting delivery dates and schedules—the same as, or substantially similar to, that required by the solicitation. The offeror shall provide references as follows [Contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications.* The offeror shall provide the names, position descriptions and information to support the qualifications—including relevant experience, specialized training and education—of all proposed key personnel (see the clause entitled "Key Personnel" in this solicitation for further definition). The

term "personnel" shall include any proposed consultants and subcontractor employees who will perform duties of key personnel.

(4) *Management Capability.* The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(5) *Technical Capability.* The offeror shall provide a detailed description of how he/she proposes to conduct the work required under the proposed contract.

(6) *Mandatory Minimum Requirements.* The offeror shall provide evidence, including copies of documents, as appropriate of [contracting officer insert description of requirement(s), e.g., licenses, minimum experience, etc., or delete this paragraph if not applicable].

(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 this Part II.

(2) The offeror shall provide information to support the offeror's proposed costs or prices as prescribed elsewhere in this Section L.  
(End of Provision)

Alternate I (Oct 1995)

Substitute paragraph (c) with the following:

(c) Part I—Technical and Management Information.

(1) *Prior experience.* The offeror shall provide evidence that the offeror's (i.e., firm's or organization's) prior experience meets the following minimum standards: [contracting officer insert specific experience requirements].

(2) *Past Performance.* The offeror shall provide evidence of the offeror's past performance as follows: [contracting officer insert specific performance requirements]. The offeror shall provide references as follows [contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications.* The offeror shall provide the names, position descriptions and evidence that proposed key personnel (see the clause entitled "Key Personnel" elsewhere in this solicitation for definition) meet the minimum qualifications described below. The term "personnel" includes any proposed consultants and subcontractor employees who will perform duties of key personnel. The minimum qualifications are: [contracting officer insert descriptions]

(4) *Management Capability.* The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(End of provision)

Alternate II (Oct 1995)

Add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause 2452.237-76 in Section I of this solicitation.  
(End of provision)

55. Section 2452.219-70 is amended by revising the section heading, the introductory text, the clause heading, paragraphs (b) through (d), and Alternate I to read as follows:

**2452.219-70 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.**

As prescribed in 2419.708, insert the following provision:

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Oct 1995)

\* \* \* \* \*

(b) Consistent with the national interest, it is HUD policy that small business, women-owned small business and small business concerns that are owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful offeror shall agree to pursue an effective and comprehensive small business, small disadvantaged business and women-owned small business subcontracting program in compliance with the clause entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns."

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of an offeror (see FAR 9.104-3). Therefore, offerors having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small, small disadvantaged and women-owned small business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan." In accordance with that clause, the offeror shall submit the complete subcontracting plan with the response to this solicitation. The content of the final plan is subject to negotiation. Failure to submit a complete subcontracting plan and negotiate its content in good faith shall make the offeror ineligible for the contract award.

(End of provision)

Alternate I (Dec 1992)

This alternate is required for all sealed bid solicitations exceeding \$500,000 (\$1,000,000 for construction) that are not set aside for small business. In such cases, insert the following paragraph (d) for that in the basic clause:

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Alternate I)." The offeror submitting the apparent low bid, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small, small disadvantaged business and women-owned small business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination (FAR Subpart 9.1). Failure to submit an adequate subcontracting plan where applicable shall make the bidder ineligible for the contract award.

(End of provision)

56. In § 2452.237-75, the clause heading and paragraph (a) are revised to read as follows:

**2452.237-75 Clearance of personnel.**

\* \* \* \* \*

Clearance of Personnel (June 1995)

(a) The contractor shall submit to the Contracting Officer within five days after contract award, two (2) completed Forms FD-258, "Fingerprint Chart", one original and one copy of the SF 85P, "Questionnaire for Public Trust Positions", and one original and one copy of the OF 306, "Declaration for Federal Employment", for the contractor and all employees who have access to the building in performance of the contract work. These forms must be submitted for all replacement employees prior to entrance on duty. Necessary forms will be furnished by HUD. If the Contracting Officer receives an unsuitable report on any employee after processing these forms or if the Contracting Officer finds a prospective employee to be unsuitable or unfit for his/her duties, the contractor shall be advised immediately that such employee cannot continue to work or be assigned to work under the contract.

\* \* \* \* \*

57. In § 2452.242-71, the introductory text is revised to read as follows:

**2452.242-71 Project management system.**

As prescribed in 2442.1107, insert the following clause:

\* \* \* \* \*

Dated: April 19, 1996.  
Marilynn A. Davis,  
Assistant Secretary for Administration.  
[FR Doc. 96-10446 Filed 4-30-96; 8:45 am]  
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