

**REVERSE AUCTION PROGRAM**  
**Uniform Physical Condition Standards (UPCS) Inspection Services**  
**PURCHASE ORDER TERMS AND CONDITIONS**  
**Effective November 17, 2004**

**1.0 Terms and Conditions**

These terms and conditions apply to all purchase orders issued by the U.S. Department of Housing and Urban Development (HUD) Office of Public and Indian Housing (PIH) Real Estate Assessment Center (REAC) under its UPCS inspection services Reverse Auction Program.

HUD may revise these terms and conditions as necessary (e.g., to comply with revisions to the Federal Acquisition Regulation and HUD Acquisition Regulation). In the event HUD makes revisions, an updated version of this document will be posted to the PIH-REAC website and made available via the auction website. Revisions will clearly indicate the date of their effectiveness. Purchase orders will include the terms and conditions that are in effect at the time the order is accepted by the contractor (see Section 1.1). Contractors are responsible for reviewing the current terms and conditions prior to placing bids to ensure understanding.

Note: The terms “purchase order” and “contract” are synonymous for the purposes of these terms and conditions.

**1.1 Acceptance of Contract**

Accessing the inspection information for the property(ies) to be inspected under this purchase order shall from the auction website constitute the contractor’s acceptance of this purchase order and these terms and conditions. No other form of acceptance, or formal contract execution by the parties to this contract, will be required.

**1.2 Definitions**

“Contractor” means the legal entity to which this purchase order is awarded. The contractor shall be legally responsible for all work performed and for complying with all terms and conditions of this purchase order.

“Inspector” is defined as the individual, certified by PIH-REAC in the UPCS inspection protocol, who performs on-site property inspections. Inspectors may be contractors, employees of a contractor, subcontractors (at any tier) to a contractor, or employees of a subcontractor.

**2.0 Scope of Services**

The contractor shall be responsible for the performance of all work required for inspections as described herein for the bid price accepted by the Government via the Reverse Auction Program for awarded inspections. The contractor shall provide all equipment, transportation, and other services and materials as needed to complete the work.

### **3.0 Contractors**

#### **3.1 Certification**

All inspectors performing inspections under this contract must be certified by PIH-REAC in the UPCS inspection protocol and must maintain active certification in accordance with Inspector Notice No. 2002-01, Maintaining Active Certification, and any additional related notices.

#### **3.2 Physical Requirements**

Inspectors must be physically able to:

- View and observe conditions in dark areas;
- Measure specific items and areas for compliance;
- Climb stairs and ladders; and
- Reach, bend, stoop, and crawl, as required by the job.

#### **3.3 Substitution of Inspectors**

The contractor shall obtain prior PIH-REAC approval before substituting an inspector assigned to perform an inspection.

### **4.0 Computer Hardware/Software Requirements**

The contractor shall have:

- The latest version of the Data Collection Device (DCD) software, computer hardware that meets the DCD software requirements as communicated by PIH-REAC, and the ability to maintain the technical environment of the DCD.
- The following software:
  - Microsoft Windows 95 or later operating system;
  - Internet Explorer v6.0 browser;
  - WinZip 6.3 or higher;
  - Microsoft Access 97;
  - Microsoft Excel 97 or 2000;
  - Microsoft Word 97 or 2000; and
  - Acrobat Reader 5.0.
- All necessary hardware and software to communicate via email.
- Internet access that supports electronic transmission of property profile data and inspection results to PIH-REAC.

The contractor shall ensure that the hardware used for inspections is compatible with HUD-provided software at all times. HUD will not compensate the contractor for upgrades to, or

replacement of contractor-furnished hardware. See also the clause at HUDAR 2452.239-71, Information Technology Virus Security.

## **5.0 Communications Between PIH-REAC and Contractors**

PIH-REAC staff will need to communicate with contractors and inspectors via both email and telephone. The contractor is responsible for ensuring the accuracy of the inspector contact information provided to PIH-REAC. All email communication to PIH-REAC must be sent to **ReacReverseAuctionProgram@hud.gov**.

### **5.1 Contact Information**

The contractor shall provide PIH-REAC with the following contact information for itself and for each inspector who will perform an inspection:

- Full name;
- Mailing address (P.O. Boxes will not be accepted);
- Phone numbers; and
- Email address.

The contractor shall also provide PIH-REAC with the normal hours of business operations during which the contractor may be reached.

### **5.2 Changes to Contact Information**

The contractor shall provide any changes to previously provided contact information to PIH-REAC as soon as it is known.

### **5.3 Failure to Maintain Contact**

The contractor shall respond promptly to communications from PIH-REAC. Repeated failure of the contractor to maintain contact with or to respond to PIH-REAC may result in the termination of this contract.

## **6.0 Inspection Scheduling**

### **6.1 Scheduling Protocol**

The contractor shall:

- Schedule the inspection directly with the MFH Property Owner/Agent (POA), PHA Executive Director (ED), or the POA/ED's appointed representative. PIH-REAC will provide the contractor with POA/ED contact information through its website, and an email text template to be used to confirm inspection information with the POA/ED. (This email text template is provided as Attachment 1 of the Reverse Auction Program Business Rules.)
- Schedule the inspection on a date and time that is mutually agreeable to the POA/ED and inspector.
- Ensure that the inspection does not start for at least 15 calendar days after the contractor notifies the POA/ED of the inspection. The POA/ED needs at least 15-calendar days notice prior to the inspection to provide time for resident notification.
- Conduct the inspection during normal business hours of the property. Inspectors shall not conduct inspection activities on weekends or Federally recognized holidays.
- Use the estimated length of time indicated for the property on the auction website (i.e. one-day inspection, two-day inspection) in scheduling the inspection.
- Estimate and include enough time in the inspection period to allow for reasonable anticipated contingencies, including travel time.
- Identify to the POA/ED the name of the inspector who will be performing the inspection.

Any exceptions to the above requirements must be approved by PIH-REAC via email. The contractor shall retain a copy of the approval.

The contractor shall immediately notify PIH-REAC by telephone or email if the contractor is unable to schedule an inspection. If the contractor is unable to schedule an inspection, because the owner or site manager is uncooperative or unwilling to permit the inspection, PIH-REAC will assist the contractor in resolving the issues.

### **6.2 Property Profile Verification**

During the initial contact and scheduling of the inspection, the contractor shall verify with the POA/ED the accuracy of the following property profile data:

- The property name and ID;
- The total number of buildings and units;
- Any reason(s) why the property should not be inspected; and
- Any other data provided by PIH-REAC for the inspection, such as the name and address of the owner and management agent, email address, and phone numbers.

### **6.3 Property Profile Discrepancies**

The contractor shall notify PIH-REAC immediately of any significant discrepancy between the property profile data PIH-REAC provided to the contractor and the verified property data obtained from the POA/ED. A significant discrepancy includes material errors of fact (e.g., wrong property name or ID), or a variance in the number of buildings or units.

PIH-REAC will verify the discrepancy and notify the contractor whether to proceed or cancel the inspection. If the inspection is cancelled, the contractor will incur no penalty for cancellation (see Section 10.3).

If the contractor fails to accurately verify the property profile data and the inspector discovers a significant discrepancy after arriving at the property, the contractor will forfeit his/her rights to cancel the inspection. In such a case, the inspector will perform the inspection using the correct unit sample size for the original price, (i.e., at no increase in cost to HUD).

The contractor's cancellation of an inspection for any reason other than those described above may result in the termination of this contract.

### **6.4 Written Confirmation**

The contractor may establish the inspection schedule orally with the POA/ED, but must confirm it in writing via email within 24 hours after oral agreement. The contractor shall copy PIH-REAC on the email at: **ReacReverseAuctionProgram@hud.gov**.

Attachment 1 of the Reverse Auction Program Business Rules documents the required text content for the email confirmation. The contractor shall complete the message by filling in all required information indicated in italics (e.g., names, dates, etc.). PIH-REAC must approve any modification of confirmation text before it is sent.

Contractors should request written (including email) confirmation from the POA/ED representative. The contractor must be able to provide this written verification of the property profile and resident notification, if requested by PIH-REAC, and shall retain the POA/ED confirmation for a period of six months. These actions are required in order to reduce reported uninspectable (RU) properties and unsuccessful inspections.

If a POA/ED does not have access to email, the contractor shall send the confirmation via certified mail and request a response via certified mail from the POA/ED confirming the inspection date and time, and resident notification. The confirmation letter shall be on the contractor's letterhead and shall use the text content. The contractor shall inform PIH-REAC separately via email of the confirmed inspection date and time.

## **6.5 Accompaniment**

In accordance with the UPCS protocol, a representative must accompany the inspector during the entire inspection.

## **7.0 Schedule Changes and Cancellations**

*PIH-REAC expects that cancellations will occur only in rare circumstances.* The contractor shall not change an established inspection schedule without notifying PIH-REAC.

### **7.1 Contractor Notification to PIH-REAC**

The contractor shall immediately notify PIH-REAC via the Technical Assistance Center (TAC) at 888-245-4860 when:

- The contractor needs to change the schedule of or cancel an inspection. The contractor must provide a justification for any schedule change made within 72 hours of the inspection date and time.
- The POA/ED requests the cancellation of or change to an inspection schedule.

PIH-REAC will notify the contractor if the schedule change or inspection cancellation is unacceptable. If the change or rescheduling is acceptable to PIH-REAC, the contractor shall coordinate with the POA/ED to reschedule the inspection.

### **7.2 REAC-PIH Cancellations**

PIH-REAC reserves the right to cancel an inspection at any time. In such a case, PIH-REAC will notify the contractor immediately. The contractor shall be compensated as set forth in Section 10.3.

### **7.3 Uninspectable Properties**

The contractor shall notify PIH-REAC immediately if the POA/ED indicates the property is no longer in HUD's inventory or if buildings/units have been rendered uninspectable. PIH-REAC will verify the status as uninspectable and notify the contractor. If verified by PIH-REAC, the inspection may be reported as uninspectable.

Reports of uninspectable properties must include the name and telephone number of the property representative reporting the property as uninspectable, and a brief explanation of why the property is uninspectable. The contractor shall utilize PIH-REAC's Scheduler system to make an on-line uninspectable property report.

## 7.4 Unsuccessful Inspections

There may be instances when, through no fault of the inspector, he/she may not be permitted to perform the inspection as scheduled after arriving at the property. These are referred to as unsuccessful inspections. The reasons for an unsuccessful inspection may vary, but include:

- Property representative cannot provide access to the buildings or units required for inspection;
- An insufficient sample of units is available for inspection;
- No property representative is available on-site to accompany the inspector; and
- The POA/ED failed to notify all residents prior to the inspection.

In the event of an unsuccessful inspection, the contractor shall immediately notify the TAC (888-245-4860), and provide a copy of the POA/ED's written confirmation of the property profile information, the agreed-upon schedule, and prior understanding that the residents were to be notified.

## 8.0 Inspections

### 8.1 Onsite Verification of Property Information

Upon arrival on site and before generating the inspection sample, the inspector shall visually verify the property profile data (including visiting each building) with the property representative. The inspector shall download the property profile data into the DCD software from the PIH-REAC website sufficiently in advance of the inspection to permit verification of all data.

In the case of single-family scattered sites, the inspector is allowed to generate the sample based on what the POA/ED states as the profile. Only in the case of *single-family* scattered sites may the inspector visually verify the profile as the inspection is conducted and add any building not previously included. Please refer to the Compilation Bulletin for a complete description of single-family sites. The website address is as follows:

[http://www.hud.gov/offices/reac/products/pass/PDFs/upcsprotocolclarifications2003\\_3.pdf](http://www.hud.gov/offices/reac/products/pass/PDFs/upcsprotocolclarifications2003_3.pdf).

The inspector shall also obtain the following information:

- Copies of lead-based paint certifications, boiler certifications, fire alarm inspections, sprinkler system inspections, and elevator inspections, if applicable.
- A copy of the POA/ED's required notice to residents of the inspection date, and information as to the means by which the residents were notified.
- A copy of the rent roll or other record, for the purposes of verifying total number of units and occupancy of the units.
- An estimate of the size of all areas of walkways, steps, driveways, roads, and parking areas included within the parameters of the property.

## **8.2 Inspection Performance**

After verifying property profile data and entering buildings/units data, the physical inspection software will determine which buildings and units are to be inspected. The type of building must be properly identified to ensure valid sampling. The inspector shall conduct complete on-site interior and exterior inspections in accordance with the UPCS inspection protocol. The inspector will record and call out all deficiencies as they are observed, with the property representative present.

## **8.3 Health and Safety Hazards**

At the conclusion of each day's inspection activities, the inspector shall provide the POA/ED property representative with a written notice of any exigent health and safety hazards (that pose an immediate threat to the health and/or safety of the residents) that the inspector observed and recorded. The form for this notification is provided as Attachment 1 of the Reverse Auction Program Business Rules. No modification of this form shall be made without prior approval from PIH-REAC.

The inspector must obtain a signature from the POA/ED representative on the form that acknowledges receipt prior to leaving the property. If the POA/ED representative refuses to sign acknowledging receipt, the inspector shall note such refusal on the form, and provide a copy to the POA/ED representative. The contractor shall retain the signed form to be provided to HUD, if requested, for a period of six months.

The inspector shall not provide any other documents to the POA/ED. After successful upload of the inspection by the inspector, PIH-REAC will inform the HUD field office having jurisdiction over the property of the life-threatening health and safety hazards noted during the inspection.

## **8.4 Uploading Inspection Results**

For each inspection performed, the inspector shall upload a complete and accurate inspection report using the DCD software. The inspector shall electronically transmit the completed inspection report through an Internet connection to PIH-REAC, *no later than the next working day* following the completion of the inspection.

## **9.0 Quality Assurance Measures**

PIH-REAC will monitor and evaluate the inspector's performance to determine compliance with the UPCS inspection protocol and the Inspector Code of Conduct through Quality Assurance (QA) reviews. PIH-REAC may solicit and consider feedback from owners, tenants, mortgagees, and POA/EDs, and use any other method PIH-REAC deems appropriate in making its assessment of the inspector's performance. PIH-REAC also reviews each inspection upon upload to determine if it should be accepted or rejected.

## **9.1 Inspection Reviews**

Each inspection is subject to a review upon upload to PIH-REAC to ensure the product is acceptable. PIH-REAC will verify that the property profile is correct, assess inspection observations, and conduct a timestamp data analysis on the inspection. This review will be the basis for PIH-REAC's acceptance or rejection of the inspection (see the *Inspection/Acceptance* clause in Attachment 1).

## **9.2 Inspections Placed On Hold**

When PIH-REAC cannot accept an inspection due to significant problems or questions concerning the inspection, it will place the inspection on hold. PIH-REAC may contact the contractor, property representative, or HUD staff to resolve the problems or questions. If the inspection can be modified and deemed acceptable to PIH-REAC, payment will be initiated. If the problems or questions cannot be resolved to PIH-REAC's satisfaction, the inspection will be rejected. If the contractor does not return contact within 72 hours, PIH-REAC may reject the inspection.

## **9.3 Rejected Inspections**

PIH-REAC will notify the contractor if an inspection is rejected. PIH-REAC may order the contractor to re-inspect the property, or re-post the inspection for auction. Such a request will be in writing (email is acceptable) and will specify the particular property to be re-inspected, the nature of the inspector's errors or omissions, and a new inspection identification number for the re-inspection. The re-inspection shall be completed within the timeframe established or as negotiated by PIH-REAC. The re-inspection is subject to all requirements of the original inspection, including scheduling and written notification to the POA/ED, as outlined within this document. Rejected inspection work is not subject to payment. The contractor may be liable for any increase in cost to HUD for the reprourement.

## **10.0 Payment Terms**

As total compensation for each inspection accepted by PIH-REAC (see the *Inspection/Acceptance* clause in Attachment 1), HUD will pay the contractor the price accepted as the successful bid on the auction website. The bid price shall be inclusive of all contractor costs of performance (e.g., travel expenses).

## **10.1 Uninspectable Properties**

HUD will pay the contractor \$50 for each uninspectable property, subject to HUD verification that the property was uninspectable (see Section 7.3).

## 10.2 Unsuccessful Inspection

HUD will pay the contractor 50 percent (rounded to the nearest whole dollar) of the winning bid price for each unsuccessful inspection, subject to HUD verification of the inspector's unsuccessful attempt to inspect (see Section 7.4).

## 10.3 Canceled Inspections

If PIH-REAC cancels an inspection, the contractor shall be paid:

- 50 percent of the winning bid price if PIH-REAC cancels less than 72 hours before the scheduled inspection starting time.
- \$50 if PIH-REAC cancels 72 or more hours before the scheduled inspection starting time.

## 10.4 Re-inspection Costs

If re-inspection of a property is required due to an inspector's deficient performance, the contractor is responsible for re-inspecting the property at no additional cost to HUD (see *Inspection/Acceptance* clause in Attachment 1).

## 10.5 Errors in Inspection Sample Size

If the contractor fails to accurately verify the number of buildings and units as required in Section 6.2 herein, and the sample size is too small, the contractor may be responsible for inspecting the additional buildings/units as necessary to meet the proper sample size at no additional cost to HUD.

If the contractor fails to accurately verify the number of buildings and units as required in Section 6.2 herein, and the size of the sample inspected is too large, HUD will not compensate the contractor for the overage.

## 10.6 Mandatory Use of *MasterCard* Credit Card

HUD will make all payments to the contractor via MasterCard. The contractor must have or establish a vendor account with a merchant processor that provides the ability to electronically process MasterCard Purchasing Card transactions. HUD will *not* pay the transaction or activation fees associated with establishing this vendor account or any credit card fees.

The contractor and merchant processor must be able to enter and pass **Level 2 data (POS/Customer Code)** to the issuing bank. The merchant processor terminal must be designated with a **Merchant Category Code (MCC) of 9399-Government Services** in order to permit payments to be authorized and settled. If the contractor does not remain a MasterCard vendor, the contractor *cannot* receive compensation for inspection work.

## **10.7 Payment Process**

Once PIH-REAC accepts an inspection in accordance with the *Inspection/Acceptance* clause herein, PIH-REAC will provide an authorization code to the contractor, which is required for payment. The contractor is responsible for entering this authorization code into the credit card processing website to initiate the electronic payment process. Payment will then be made electronically, directly to the contractor's account.

## **11.0 Conflict of Interest and Other Prohibitions**

### **11.1 Re-inspection of Same Properties**

By entering into this contract, the inspector shall be ineligible to perform any re-inspection of any properties inspected under this contract for a period of twelve months, except for re-inspections required in accordance with the *Inspection/Acceptance* clause. The period of ineligibility shall begin on the date of PIH-REAC's acceptance of the property inspection performed under this contract.

### **11.2 Interest in Property to Be Inspected**

An inspector may not inspect any property in which the inspector or any of his or her business associates or immediate family members has a financial interest in its ownership or management. An inspector may not inspect any property in which the inspector or any of his or her business associates or immediate family members has performed any other work of any nature under contract or purchase order from that property or owner. If an inspector has a conflict of interest and the contractor has no other inspector available to perform the inspection (see also Section 3.2), PIH-REAC may terminate this contract and contract with another contractor for the inspection. It is the contractor's responsibility to refrain from bidding on inspection work in which an inspector(s) has a conflict of interest.

### **11.3 Property Repairs**

The inspector shall not repair any conditions found during inspections, and endorse, recommend, or otherwise advise the use of specific individuals or business firms for such repair work.

### **11.4 Soliciting and Selling Other Products and Services**

Neither the contractor nor the inspector shall solicit the sale of, nor sell any other services or items (e.g., smoke detector stickers) to the POA/ED or tenants during the scheduling process or the inspection.

## **12.0 Federal Acquisition Regulation (FAR) and HUD Acquisition Regulation (HUDAR) Purchase Order Terms and Conditions**

See Attachment 1.

**Small Business Set-Aside Program**

- (1) The North American Industry Classification System (NAICS) code for this purchase order is SIC 541350.
- (2) The small business size standard is \$6,000,000.00.

**Federal Acquisition Regulation (FAR) Clauses**

**52.219-6 Notice of Total Small Business Set-Aside.**

As prescribed in 19.508(c), insert the following clause:

Notice of Total Small Business Set-Aside  
(June 2003)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.*

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered non-responsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

*(End of clause)*

**52.213-4 Terms and Conditions -- Simplified Acquisitions (Other Than Commercial Items)  
(Oct 2003)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

- (1) The clauses listed below implement provisions of law or Executive order:

- (i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- (ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).
- (iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- (iv) 52.225-13, Restrictions on Certain Foreign Purchases (June 2003) (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129).
- (v) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

- (i) 52.232-1, Payments (Apr 1984).
- (ii) 52.232-8, Discounts for Prompt Payment (Feb 2002).
- (iii) 52.232-11, Extras (Apr 1984).
- (iv) 52.232-25, Prompt Payment (Feb 2002).
- (v) 52.233-1, Disputes (July 2002).
- (vi) 52.244-6, Subcontracts for Commercial Items (Apr 2003).
- (vii) 52.253-1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, ***unless the circumstances do not apply:***

(1) The clauses listed below implement provisions of law or Executive order:

- \* \* \* \* \*
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)  
\* \* \* \* \*
- (vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wade Island, or the outer continental shelf lands).  
\* \* \* \* \*
- (ix) 52.232-36, Payment by Third Party (May 1999). (Applies when the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Government-wide commercial purchase card to be used are identified elsewhere in this contract.)  
\* \* \* \* \*

(c) FAR 52.252-2, *Clauses Incorporated by Reference (Feb 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full

text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

**FAR Clauses and Provisions:** <http://www.arnet.gov/far/>

**HUD Acquisition Regulation (HUDAR) Clauses and Provisions:**  
<http://www.hud.gov/offices/cpo/hudar.cfm>

(d) *Inspection/Acceptance.* The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights --

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate

assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of Clause)

#### **52.243-1 Changes-Fixed Price Alternate I (APR 1984)**

### **HUD ACQUISITION REGULATION (HUDAR) CLAUSES**

2452.203-70 Prohibition Against the Use of Federal Employees (DEC 1992)

2452.209-72 Organizational Conflicts of Interest (APR 1984)

#### **2452.239-71 Information Technology Virus Security (FEB 2000)**

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract: [product description, part/catalog number, other identifier, and serial number, if any]

“This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery.”

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not subrogate the rights of the Government under any other clause of this contract.

**INSURANCE**

**Comprehensive General Liability Insurance (GGLI).** The Contractor shall competitively obtain for each State in which a property is assigned, and maintain at all times, Comprehensive General Liability (CGL) insurance for each property assigned under this purchase order.

a. **Named Insured.** The policy shall name the contractor as the Named Insured.

b. **Policy Coverage Limits.**

(1) The following policy coverage limits shall apply (except for nursing homes):

Each Occurrence Limit	\$500,000
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General Aggregate Limit	\$500,000
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**Note: Aggregate limit must apply on a “per location” per annum basis.**

c. **Services.** CGL insurance shall provide, for the Named Insured, all necessary services for the defense, payment, and settlement of any and all claims, and for personal injury and property damage arising from occurrences on the premises of properties assigned under this purchase order for the policy coverage limits identified in clause above.

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