

**Procurement Policies and Procedures (2210.3, Revision 10),
Change 1, dated March 2019**

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Chapter 2401 – Federal Acquisition Regulation (FAR) System

2401.000 – Scope of chapter.

This chapter prescribes policies and general information about this handbook including: purpose, authority, applicability, issuance, arrangement, numbering, maintenance, administration, and deviations (see FAR Part 1 and HUD Acquisition Regulation (HUDAR) Part 2401 for related information). The chapter also sets forth policies and procedures concerning the authority and appointment of contracting officers (COs), Contracting Officer Representatives (CORs) and internal reviews, approvals, and clearances related to contract actions.

2401.101 – Purpose.

This handbook prescribes internal reviews, approvals, and clearances related to contract actions. Internal Departmental policies and procedures for the acquisition of personal property and nonpersonal services using procurement contracts under the authority of the Federal Acquisition Regulation (FAR), Title 48, Chapter 1 of the Code of Federal Regulations (CFR) and the HUD Acquisition Regulation (HUDAR), Title 48, Chapter 24 CFR. This guidance implements and supplements the FAR and HUDAR. The FAR and HUDAR are the primary sources of acquisition policy and procedural guidance for all Departmental contract actions governed by them and take precedence where any guidance provided in this handbook conflicts with them. This handbook does not seek to duplicate the detailed content of other sources of formal policy (*e.g.*, regulations, Executive Orders, or statutes) or Departmental procedures. Therefore, to the greatest extent practicable, the handbook will reference original sources of information but will not excerpt or paraphrase that source material unless necessary (*e.g.*, to provide a context for the handbook's guidance).

2401.102 – Statement of guiding principles for the Federal Acquisition System.

2401.102-3 – Acquisition team.

2401.102-370 - Collaboration between the Acquisition Team. Collaboration between all acquisition team members is strongly encouraged throughout the acquisition life-cycle.

2401.103 – Authority.

Section 7(d) of the Department of Housing and Urban Development Act, as amended, authorizes the Secretary to delegate functions, powers and duties as the Secretary deems necessary. The Secretary has designated the Deputy Secretary to serve as the Department's Chief Acquisition Officer (CAO). The authority of the CAO includes the authority to redelegate any of the duties and functions of the CAO to the Senior Procurement Executive (SPE). The Chief Procurement Officer (CPO) is designated as the Department's SPE pursuant to the designation published in the Federal Register, Vol 78, No. 146, Tuesday, July 30, 2013. The CPO issues Handbook 2210.3 pursuant to the authority the Deputy Secretary of HUD has delegated to the SPE to issue Departmental acquisition policy as set forth in HUD's published delegations of procurement

authority and pursuant to Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2401.104 – Applicability.

All HUD acquisitions for supplies and services must comply with this handbook unless specifically excluded by the FAR, the HUDAR, or this handbook. By extension, the CPO may mandate templates, forms and best practices that will be loaded to OCPO's intranet. These OCPO intranet pages are referenced in the handbook, and by reference incorporated in terms of requiring compliance.

2401.104-170 – Mandatory Templates.

(a) OCPO and HUD's Office of General Counsel collaborated to create mandatory acquisition templates to:

- (1) Standardize solicitations and evaluation tools while providing the flexibility for customization to the extent necessary;
- (2) Reduce risk to the Department of protests;
- (3) Reduce the volume of errors;
- (4) Provide tools to the acquisition workforce that facilitate thoughtful and supportable decision making; and
- (5) Provide a means to accurately and concisely document the Government's analysis and conclusions in acquisitions.

(b) The HUD Acquisition workforce must use the mandatory OCPO acquisition templates unless a waiver has been approved by the Deputy CPO or CPO.

(c) All approved and mandatory OCPO acquisition templates are maintained and can be accessed at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) Acquisition templates will be routinely updated, deleted or newly created. It is solely contingent upon the HUD acquisition workforce to check the above website to ensure they are using the latest acquisition template at any given time. Acquisition staff will load completed templates into the acquisition management system.

(e) There are no exceptions to this policy.

2401.105 – Issuance.

2401.105-170 – Publication.

Handbook 2210.3 is issued as an electronic document and available for downloading from the HUD intranet site.

2401.105-270 – Arrangement of the Handbook.

(a) *General.* This handbook is divided into chapters (each of which covers a separate aspect of acquisition), subchapters, sections, and subsections that correspond respectively to “Parts,” “Subparts,” “Sections,” and “Subsections” contained in the FAR and HUDAR. When this handbook includes no content to implement or supplement a specific FAR or HUDAR section, subsection, or paragraph, the corresponding section, subsection, or paragraph number will be missing from this handbook. Consequently, there will be obvious, and intentional, discontinuities in numbering (*e.g.*, a skip in paragraph letters from (b) to (d), or the absence of a section number). When this handbook provides no content to implement or supplement a FAR or HUDAR Part or Subpart, the Chapter or subchapter numbers for which there is no content will be followed with the legend “Reserved.” Content may be added in the future as needed.

(b) *Numbering.*

(1) Unlike other HUD handbooks, this handbook conforms to the arrangement and numbering system used in the FAR and uses the same numbering scheme as the HUDAR. This numbering scheme allows the reader to clearly and quickly associate specific information in the handbook with directly related information in the FAR and HUDAR. For example, Chapter 2401 of the handbook corresponds to FAR Part 1 and HUDAR Part 2401.

(i) The numbering system permits the discrete identification of every Handbook paragraph. As in the HUDAR, the numbers identifying chapters, subchapters, sections, and subsections of this handbook all begin with “24,” which is HUD’s numerical identifier in the Federal Regulations System (Code of Federal Regulations). The digits between “24” and the decimal point represent the chapter number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subchapter (one or two digits, *e.g.*, 1 or 15), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs.

(ii) Subdivisions below the section or subsection level consist of parenthetical alpha-numeric using the following sequence: (a) (1) (i) (A) (I) (i).

(iii) The following illustrates the make-up of a Handbook number citation using this subsection as the example:

2401.105-270(b) (1) (iii) =

Chapter: **2401 – Federal Acquisition Regulations System**

Subchapter: 2401.1 – **Purpose, Authority, Issuance**
Section: 2401.105 – **Issuance**
Subsection: **2401.105-270¹** – **Arrangement of the Handbook**
Paragraph: **(b), *Numbering***
Subparagraph: **(1) (iii) – illustration of numbering scheme**

(2) This handbook contains many references to the FAR, HUDAR and other areas within this handbook. When a citation references the FAR, it will be prefaced by “FAR.” When a citation references the HUDAR, it will be prefaced by “HUDAR.” When a citation references another area within this handbook, it will be prefaced by “Handbook.” When a citation references another handbook, it will be prefaced by “HUD Handbook.”

(3) This handbook implements (*i.e.*, expands upon) certain existing FAR or HUDAR coverage. When it does so, the Handbook coverage will use the identical numbering sequence and caption of the FAR or HUDAR segment being implemented. For example, both the HUDAR and Handbook 2210.3 sections providing guidance on ratifying unauthorized commitments are numbered and titled, “2401.602-3 Ratification of unauthorized commitments.” The Handbook does not address every existing FAR or HUDAR chapter, part, subpart, section or subsection. FAR chapters not addressed will appear as “Reserved”. FAR and HUDAR parts, subparts, sections or subsection, not addressed by the Handbook, will not be repeated.

(4) This handbook also supplements (*i.e.*, provides guidance not contained in) the FAR and HUDAR. Supplementary material for which there is no counterpart in the FAR or HUDAR is numbered using chapter, part, subpart, section, or subsection numbers of 70 and up (*e.g.*, chapter 2470, subchapter 2401.70, section 2401.370, or subsection 2401.301-70). For example, this paragraph 2401.105-270(b) supplements FAR 1.105-2(b).

2401.108-70 – Handbook conventions.

(a) *Definitions of specific words and terms.* Definitions in Chapter 2402 apply to the entire handbook unless specific exception is made in another chapter, section, paragraph, or subparagraph. Words or terms defined only in a specific chapter, section, paragraph, or subparagraph have that meaning when used in that chapter, section, paragraph, or subparagraph. Undefined words retain their common English meanings.

(b) *Delegation of authority.* Any authorities delegated by this handbook may be further redelegated or terminated by the CPO, unless specifically indicated otherwise.

(c) *Dollar Thresholds.* Unless otherwise specified, a specific dollar threshold is the final anticipated dollar value of the action, including the total value of all options. If the action establishes a maximum quantity of supplies or services to be acquired, a ceiling price, or a final

¹The use of “70” indicates that this subsection supplements FAR subsection 1.105-2 and/or HUDAR subsection 2401.105-2 as further described in paragraph (b)(3) below.

price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government including all options.

(d) *Application of Handbook revisions and changes to solicitations and contracts.* Because this handbook is intended for internal use only and is not a published document (*i.e.*, not available to the general public), the guidance it contains generally does not apply to contracts directly. COs may not use or cite this handbook as an authority for the inclusion of specific terms and conditions in contracts.

(e) *References and citations.* Cross references to the FAR or HUDAR will be cited by “FAR” or “HUDAR” followed by the numbered cite. Cross references to the Handbook will be cited by “Handbook” followed by the number cite. For example, HUDAR 2401.602-3 refers to the subsection of the HUDAR and Handbook 2401.602-3 refers to the subsection in Chapter 2401 of this handbook. Citations of authority (*e.g.*, statutes or Executive orders) in the handbook follow the *Federal Register* form guides. Citations of statutes, Executive Orders, Office of Management and Budget (OMB) Circulars, Office of Federal Procurement Policy (OFPP) letters, or the Code of Federal Regulations, include all applicable amendments to those documents, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the CO is responsible for the action, unless another party is specifically identified.

Subchapter 2401.2 – Administration

2401.270 – Maintenance of the Handbook.

The OCPO is responsible for maintaining this handbook in accordance with HUD Handbook 000.2, *HUD Directives System*. Such maintenance includes ensuring the currency and accuracy of its content and issuing revisions and changes as needed.

Subchapter 2401.3 – Agency Acquisition Regulations

2401.370 – Amendment of this Handbook.

All revisions and changes to this handbook will be processed as directed in HUD Handbook 000.2.

Subchapter 2401.4 – Deviations from the FAR

2401.471 – Definition.

For the purposes of this handbook, “deviation” means a relaxation or omission of, or change to any portion(s) of the handbook. For the purposes of deviations from the FAR and HUDAR, deviations have the meaning set forth at FAR 1.401.

2401.472 – Policy.

(a) Deviations from the FAR and HUDAR will be processed in accordance with FAR 1.4 and HUDAR 2401.4.

- (b) The CPO will issue all deviations from this handbook in writing.
- (c) Normally, deviations will not be allowed if the change affects (*e.g.*, imposes a new requirement on) any organization outside of OCPO. Such revisions must normally be made via formal “change” or “revision,” as those terms are defined in HUD Handbook 000.2. Exceptional cases may be brought to the Departmental Directives Officer (DDO) for consideration.
- (d) All requests for deviations must be initiated in writing by the responsible CO and reviewed and approved by the Assistant CPO (ACPO) and Deputy CPO (DCPO) before being submitted to the CPO. The package must include the justification for the deviation including any supporting documentation.
- (e) The CPO will determine if a requested deviation can be made without a formal change or revision to this handbook. If the CPO determines that a revision or change is needed, the CPO will direct the ACPO for Policy, Systems and Risk Management to revise or change the handbook accordingly.
- (f) The CO will place all requests for deviation, including the justification, and the CPO’s approval or other disposition in the applicable contract file.

2401.473 – Individual deviations.

Individual deviations affect only one contract.

2401.474 – Class deviations.

Class deviations affect more than one contract and normally, a group of related contracts. When it is known that a class deviation will be required on a permanent basis, the CPO must issue an appropriate formal change or revision to this handbook in accordance with HUD Handbook 000.2.

2401.475 – Alterations to FAR and HUDAR solicitation provisions and contract clauses.

The CPO must approve any alteration to a FAR or HUDAR provision or clause, other than alterations permitted by the prescriptions for such clauses, through the issuance of a deviation.

Subchapter 2401.6 – Career Development, Contracting Authority, and Responsibilities

2401.601 – General.

2401.601-70 – General.

(a) *Chief Acquisition Officer (CAO)*. By notice published in the Federal Register, the Secretary of HUD has designated the Deputy Secretary as HUD’s CAO. The CAO is the executive level acquisition official responsible for agency performance of acquisition activities and acquisition programs created pursuant to the Services Acquisition Reform Act of 2003 (“SARA”), Section 1421 of Public Law 108-136. As stated in SARA, the CAO advises and assists the head of the

executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities. In accordance with the published designation and delegations of authority, the CAO may delegate any of the CAO's functions to the Senior Procurement Executive. The CAO's specific authority and functions are described in the Federal Register. Delegations of Contracting Authority, 74 Fed. Reg. 46240 (July 30, 2013).

(b) *Senior Procurement Executive (SPE)*. In accordance with E.O. 12931, *Federal Procurement Reform* (October 13, 1994) and Section 1421 of Public Law 108-136, *Services Acquisition Reform Act of 2003* ("SARA"), and by notice published in the Federal Register, the Secretary of HUD has designated the CPO as the Department's SPE and delegated authority for all HUD acquisition to the SPE. The delegation permits the CPO to redelegate contracting authority to qualified OCPO personnel. The delegation also permits the CPO to delegate authority for simplified acquisitions (see FAR Part 13) to any qualified HUD personnel. The SPE's specific authority and functions are described in the HUDAR and the Federal Register. HUDAR 2401.601-70; Delegations of Contracting Authority, 76 Fed. Reg. 53936 (July 30, 2013) and 76 Fed. Reg. 53936 (August 30, 2011).

(c) *Redelegations of contracting authority*. In accordance with the Department's published delegations and redelegations of procurement authority:

(1) The CPO has designated the DCPO, the ACPO for Program Operations, the ACPO for Support operations, the ACPO for Field operations and the ACPO for Policy, Systems and Risk Management as COs with unlimited contracting authority. No further delegation of authority to them is necessary. They may not redelegate any of their contracting authority.

(2) The CPO is authorized to redelegate contracting authority to:

(i) Qualified OCPO personnel as COs, to enter into, administer, and terminate contracts, and interagency agreements entered into under the authority of the Economy Act (31 U.S.C. 1535), for property and services required by the Department (including the placement of paid advertisements in newspapers), and make related determinations and findings (see Handbook 2401.603 for specific guidance on CO delegations of authority and Certificates of Appointment); and

(ii) Qualified Departmental employees, to engage in the following purchasing procedures: simplified acquisitions (FAR Part 13); and issuance of pre-priced orders under contracts established by other Government sources in accordance with FAR Part 8, or under pre-priced indefinite-delivery contracts established by the Department; and

(iii) Authority for credit card purchases under HUD's Government-wide Purchase Card (GPC) program. The CPO retains oversight authority for all HUD purchase card activity including the development of relevant policy and the periodic assessment of HUD's credit card program.

(3) No further redelegations of contracting authority may be made.

(d) *Customer office authority.* Except as specifically delegated in writing by the CPO through CO appointments, personnel in offices other than OCPO have no contracting authority. Customer office responsibilities regarding specific areas or steps in the acquisition process are described throughout this handbook.

2401.602 – Contracting Officers.

2401.602-1 – Authority.

COs have the authority described in FAR 1.602-1. The CPO delegates contracting authority in writing to qualified personnel via a certificate of appointment commonly referred to as a “warrant” (see Handbook 2401.603). Each such delegation of contracting authority specifies the limits (*e.g.*, dollar threshold on contract obligations) on the individual’s authority as a CO. COs shall display their warrants in a prominent location within their work area. Upon request, COs will provide information on their limits. However, COs are not required to reveal any information of a personal or private nature (*e.g.*, that would be unreleasable under the Privacy Act and the Freedom of Information Act).

2401.602-170 – Contracting methods.

COs will determine the appropriate contracting method (*i.e.*, required source of supply, simplified acquisition procedures, commercial acquisition procedures, sealed bidding, or negotiation) for each acquisition requirement in accordance with the applicable procedures set forth in FAR Parts 8, 12, 13, 14, and 15. In determining the contracting method, COs will consider all relevant factors, such as the nature of the requirement, amount of available lead time, total estimated dollar value, ability to accurately estimate a fixed price, need for evaluation of factors other than price, etc. COs will also assess the suitability of other available methods of acquisition, including task orders under existing contracts, interagency agreements and commercial item acquisition (see FAR Part 12 and Part 17) to satisfy the requirement.

2401.602-2 – Responsibilities.

(a) *Contracting Officer Representatives (CORs).* Certain technical responsibilities and duties related to the award and administration of contracts (*i.e.*, duties that do not involve the obligation or deobligation of funds or result in establishing or modifying contractual terms and conditions) may be assigned to HUD employees whom a CO has formally designated as a COR. It is HUD policy that a COR be delegated duties for each contract above the simplified acquisition threshold, including individual tasks issued under GSA Federal Supply Schedule contracts. When they deem it necessary, COs also may appoint and delegate specific duties to primary and subordinate or alternate CORs to a specific contract (*e.g.*, to monitor contractor performance in a specific geographical service area or technical area). The Program Office may designate one or more program employees who do not perform COR duties but support the COR in technical matters as subject matter experts. See Handbook 2401.604 for guidance on responsibilities and functions. For the purposes of this handbook, COR duties may not be redelegated further.

(1) *Designation Authority.* Only COs are authorized to designate CORs.

(2) *Nomination.*

(i) *Nominating official.* The head of the program office with overall responsibility for the contract, or designee will nominate the COR.

(ii) *Nomination of primary and subordinate or alternate CORs.* Program offices may request the appointment of primary and subordinate or alternate CORs to specific contracts and will justify the need for their use under the contracts. In the situation of primary and subordinate or alternate COR designations, the CORs are not required to be from the same organizational component but each must be nominated by the head of the office that employs them. The office heads or designees must concur in the nominations before submission to the CO.

(iii) *Nomination Submission.* The nominating official must nominate the COR in writing using the most current format on the OCPO templates web site found at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

The nomination will be submitted as soon as practical, but no later than 30 days after release of the requisition package. The nomination memo must identify the last date that the nominee attended Personnel Security Division training on Personal Identity Verification, Information Technology and building security. The nominating official will provide any supplementary information concerning a nominee's qualifications as requested by the CO. Nominations must identify the geographic or functional responsibilities for each primary, subordinate, or alternate COR.

(iv) *Denial of nomination.*

(A) If the CO requires additional information as a result of an incomplete nomination package, the CO will request such information in writing from the nominating official (*e.g.*, evidence of completion of required training or its equivalent). If upon review of the additional information, the CO believes the nominee should not be designated, the CO will proceed to paragraph (B) below.

(B) If the CO believes a nominee is unqualified (*e.g.*, fails to meet training and certification requirements) and/or unfit (*e.g.*, performed the COR function poorly under previous appointments), the CO will promptly notify their supervisor and ACPO and provide the rationale for recommending denial. The supervisor will notify the nominating official in writing and request the program office submit another nominee for the COR function.

(C) If the supervisor and the nominating official cannot resolve a disagreement over a nomination, the final decision will be made by the responsible ACPO.

(3) *Timing of designation.*

(i) The COR will be designated as soon as practicable in the procurement process, ideally once the annual strategic acquisition plan containing the action has been approved and before the first IAT meeting. (Whenever practicable, the COR shall be included in the individual acquisition planning process (see Handbook 2407.1). This enables the COR and the CO to establish a working relationship and collaborate throughout the acquisition process. A COR must be designated no later than the date the requisition for the contract action for which the COR will be responsible is submitted to OCPO.

(4) *Delegation documentation.* The CO will formally designate CORs by issuance of a written Delegation of Authority memorandum that identifies the contract(s) to which it applies and specifies the delegated duties and responsibilities to each nominee. The CO will provide copies of the Delegation of Authority to the initiating program office head and to each COR's supervisor. The COR will maintain the original Delegation of Authority memorandum in the COR contract file and a copy of each Delegation of Authority memorandum will be placed in the contract file. The standard *Delegation of Authority Memoranda* format is found on the OCPO Template web site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

The memorandum will be customized based upon the acquisition involved and the duties the CO is delegating to each COR.

(5) *Delegation content.*

(i) *COR.* The Delegation of Authority memorandum will authorize the COR to act on the behalf of the program office head and CO in activities involving those technical aspects of the proposed contract that are the responsibility of the program office. The delegation must describe, and specify any limits on, the COR's responsibilities and duties that the CO deems necessary and specify the COR responsibilities and duties that are delegated.

(ii) *Primary and subordinate or alternate CORs.* When primary and subordinate or alternate CORs are to be designated, the Delegation of Authority will explicitly specify the duties and responsibilities that are assigned to each COR under the stipulated contract(s). Delegations must identify the geographic or functional responsibilities for each primary, subordinate, or alternate COR.

(iii) *Delegation of additional COR duties.* Additional COR duties may be delegated after the original delegation subject to the written approval of the CO and the

concurrence of the new COR's Program Office Head or designee. The CO will issue a new Delegation of Authority memorandum to the new COR, retain a copy for the contract file, and provide a copy to the program office head, and to the COR's supervisor. COR duties may not be redelegated further.

(6) *Deficient performance.* The program office is responsible for ensuring that CORs perform their assigned contract-related duties. When a COR consistently fails to perform duties or takes actions inappropriate to the COR function (e.g., violation of procurement ethics rules), the responsible program official will take action to ensure that the deficient performance or inappropriate action is remedied. If the deficient performance or action is not, or cannot, be remedied, the program official will promptly notify the CO of a replacement nominee. Any replacement will be made as soon as practicable so as to not jeopardize the contract. The CO will promptly notify the responsible program official whenever the CO becomes aware of performance problems that may necessitate corrective action or replacement of the COR.

(7) *COR changes.* If a COR needs to be replaced, regardless of the reason, the CO will seek a new COR nomination from the program office. The program office may also request changes in COR designations. Such requests must be made in writing to the CO and include the rationale for the change in designation. The CO will make all designation changes by issuing a Delegation of Authority memorandum to the new COR, effectuating an administrative modification to the contract rescinding the old delegation and incorporating the new delegation, and providing copies of the revised signed Delegation of Authority memorandum to the program office head, the new COR, the COR's supervisor and contractor.

(8) *Notification to the contractor.*

(i) In accordance with FAR 1.602-2, the CO will provide the contractor with a copy of the COR Delegation of Authority memorandum.

(ii) For new contract awards, the Delegation of Authority memorandum may be provided in the post-award orientation (see Handbook 2442.503-170).

(iii) The CO will notify the contractor of any replacement of the COR and any changes to their duties and authority and provide a new or revised appointment memorandum. For indefinite-delivery contracts, the CO will notify the contractor if the COR for a given task order will be different than the COR of record in the contract. Notification may be by letter or email. The CO must also execute a formal modification to the contract in the acquisition management system to effect any change in the COR or the COR's duties and responsibilities.

(iv) Unless the CO instructs them otherwise, CORs will not initiate contact with contractors until the CO's notice has been made.

(9) *COR qualifications and training.*

(i) Individuals serving as CORs must possess a sound knowledge of Federal acquisition fundamentals and the requirements of the specific contracts to which they are assigned. They must also have a thorough understanding of their specific duties, responsibilities, and authority. The CPO implemented a certification program (FAC-COR; see Handbook 2401.601-70) that specifies the training and experience requirements that CORs must meet. Individuals who have not already met the requirements at the time of their proposed appointment must attend training or receive equivalent instruction before assuming their duties. Requests for certification will be submitted and processed in accordance with OCPO's latest FAC-COR Handbook posted to the OCPO intranet site. Nominees must provide the CO with copies of their FAC-COR certifications.

(ii) The program office head will be responsible for determining that COR nominees have met the requirements in paragraph (1) prior to nominating them. Prospective CORs or their program office heads should contact the CO if they have questions about whether they meet the requirements.

(iii) The CO will ensure that a copy of the COR's FAC-COR certification is placed in the contract file to which the COR is assigned. The CO may request verification from the nominating official that a proposed COR has met the FAC-COR requirements.

(iv) On a case-by-case basis, if a COR's responsibility is limited to a narrow or highly specialized area of technical expertise (*e.g.*, evaluating specific aspects of technical deliverables), the COR may be exempted from meeting the full FAC-COR requirements. The Acquisition Career Manager (ACM) and CPO must approve the exemption.

(10) *Oversight of COR performance.* Because they are ultimately responsible for contract administration, COs are responsible for ensuring that the COR functions are properly carried out. In addition, OCPO is authorized to establish and maintain oversight procedures for ensuring COR compliance with mandatory training requirements and COR performance regarding contract-related duties. The CPO has issued a separate desk guide on contract monitoring that is accessible from the OCPO intranet site.

(11) *Ensuring COR coverage.* Program offices are responsible for ensuring that COR functions are adequately performed by qualified personnel during any period of time when the COR of record is absent or unavailable. If an Alternate COR has not been assigned, the program office will notify the CO promptly whenever the COR will be absent or unavailable to discharge duties (*e.g.*, due to sickness or injury) for an extended time period and request that a temporary replacement be appointed. As requested by the program office, COs may appoint temporary replacement CORs. The CO may appoint an Alternate COR when appointing the primary COR, if the CO deems it necessary to ensure full coverage of the COR duties. COs will use their own judgement when deciding to appoint temporary or Alternate CORs.

2401.602-3 – Ratification of unauthorized commitments.

(a) *Definitions.* For the purposes of this section --

“*Ratification*” and “*unauthorized commitment*” have the meanings set forth at FAR 1.602-3.

“*Ratification official*” means the individual identified in HUDAR 2401.602-3(b)(3).

(b) *Policy.*

(1) *Contracting authority.* All HUD procurement obligations will be made by authorized COs acting within the limits of their delegated contracting authority. While the FAR and HUDAR both permit the ratification of unauthorized commitments, neither sanctions the use of ratification as an acceptable acquisition strategy. Therefore, in accordance with FAR 1.602-3(b)(1), it is HUD policy that ratifications will not be used in a manner that encourages the making of unauthorized commitments by HUD personnel and are strongly discouraged. Each unauthorized commitment must be met with appropriate corrective and disciplinary measures to ensure that future unauthorized commitments are not made.

(2) *Ratification before payment.* In accordance with FAR 1.602-3 and HUDAR 2401.602-3, the appropriate authorized ratification official must approve the ratification of an unauthorized commitment that results in an obligation on the behalf of the Department to pay for supplies or services before payment for such commitment may be made.

(3) *Ratification of Interagency Agreements.* In addition to contracts and simplified acquisitions, HUD may obtain supplies or services from other Federal agencies under interagency agreements (IAAs) and via interagency acquisitions. IAAs must be executed in accordance with FAR Subpart 17.5 and Handbook Subchapter 2417.5. IAAs resulting in an interagency acquisition must be executed by an OCPO CO. Any such IAA executed by other than an authorized OCPO CO must be ratified, and the ratification must be approved by the appropriate ratification official.

(c) *Limitations.*

(1) The CO will obtain legal concurrence on the payment of any unauthorized commitment above the simplified acquisition threshold (see also HUDAR 2401.602-3(c)(5)). The CO may seek the advice of counsel in the resolution of all ratifications, specifically regarding the legality and completeness of the ratification request, the appropriateness of the expenditure and the funding source, and the release of claims.

(d) *Non-ratifiable commitments.* The creation of an unauthorized commitment does not guarantee that it will be ratified, or that payment will be made by the Government.

(1) The following types of unauthorized commitments will not be ratified:

- (i) Commitments for supplies or services that are determined not to be necessary;
 - (ii) Commitments that would be otherwise invalid, inappropriate, or unenforceable (*e.g.*, illegal actions, or supplies that are not a valid need of the Government or are additions to services procured through the contract); and
 - (iii) Commitments that create a monetary obligation for which there is insufficient funding. Funds sufficient to pay for the unauthorized commitment must have been available and remained available from the time the commitment was first made and not simply at the time it is ratified (see also FAR 1.602-3).
- (2) If the ratification of an unauthorized commitment is disapproved, the CO will promptly notify the individual who made the unauthorized commitment and the program official who signed the request for ratification, in writing, stating the reasons for disapproval and recommending that the individual obtain legal advice. The CO will also advise the program official and the individual that the non-ratifiable commitment will not be paid in accordance with prescribed contracting methods of payment.
- (3) If a non-ratified unauthorized commitment was made using the GPC, or if payment has already been made, the individual responsible for the unauthorized commitment may be billed or other reimbursement action taken.
- (4) Each unauthorized commitment must be addressed with appropriate corrective action and, if proper, disciplinary measures to ensure that future unauthorized commitments are not made.
- (5) If the ratification of the unauthorized commitment is disapproved because the continuous availability of funds from the time the commitment was made until the time the commitment would be ratified is uncertain or cannot be verified, the circumstances and amounts in question must be directed to legal counsel in accordance with the Administrative Control of Funds: Policies and Procedures Handbook, 1830.2-6 for investigation as a possible violation of the Antideficiency Act.
- (6) If the CO has reason to believe that an unauthorized commitment was made fraudulently or intentionally (*e.g.*, not through lack of understanding of one's authority), the CO will refer the matter promptly through the responsible ACPO and the CPO to the Office of the Inspector General for Investigation.
- (7) COs will consult legal counsel when contemplating not recommending ratification of an unauthorized commitment to their ACPO and DCPO.

2401.602-370 – Ratification process.

(a) *Notification of unauthorized commitment.* The program office is responsible for notifying the CO immediately upon discovery of the unauthorized commitment. If the program office personnel are unsure who the CO is, they may contact the immediate office of the CPO for information.

(b) *Written request for ratification.* In accordance with HUDAR 2401.602-3(b)(1), the office with oversight of the individual who created an unauthorized commitment will request a ratification, in writing, as soon as the existence of the commitment becomes known. The request must be made through the responsible CO to the designated official.

(c) *Request and approval format.* All ratifications will be requested and approved using the *Request for Ratification of Unauthorized Commitment* template issued by the OCPO. The template may be downloaded from the OCPO intranet site.

(d) *Request content.* The request will include:

- (1) An explanation of the need for the services or supplies;
- (2) The reasons why normal procurement procedures were not followed;
- (3) The circumstances and events associated with the unauthorized commitment;
- (4) The price competition that was obtained, or if no competition was obtained, a detailed justification of the price;
- (5) The amount of any funding needed to meet the obligation created by the unauthorized commitment;
- (6) A certification by the requesting office's budget officer that allotted but unobligated funds in the amount necessary to pay for the entire commitment were available at all times from the date of the unauthorized commitment through the date of the certification;
- (7) The name and title of the individual who made the unauthorized commitment; and
- (8) A description of the corrective management measures taken, or to be taken, to prevent future unauthorized commitments. If the individual who made the unauthorized commitment is no longer available, appropriate program personnel will provide the information described in this paragraph.

(e) *Approval process.*

- (1) The program office is responsible for submitting a request for ratification immediately upon its discovery that an unauthorized commitment has been made. The program office will complete its portion of the request and approval template and provide it to the CO via the acquisition management system.

(2) Upon its receipt, the CO will obtain a tracking number and determine if the request is complete and whether it is justified.

(i) If the CO determines that the request is incomplete, the CO will return it to the program office for clarification and additional information.

(ii) If the CO determines that the request is complete, but the ratification is not justified, the CO will indicate denial, sign it and forward it through their supervisor and ACPO to legal counsel for review (if required).

(iii) If the CO determines that the request is complete and adequately justifies the requested ratification, the CO will indicate recommendation to approve it, sign it and forward it to legal counsel for review, if required. If legal review is not required or desired, the CO will submit the request through the supervisory chain directly to the ratification official for approval.

(3) The CO is required to provide the following ratifications to legal counsel for review:

(i) All requests for ratification that exceed the simplified acquisition threshold (see HUDAR 2401.602-3(c)(5)); and

(ii) All requests for ratification of actions under an IAA that meet the Simplified Acquisition Threshold.

(4) Legal counsel will review the request and the CO's recommendation or denial and provide the CO with its concurrence or nonconcurrence. Any nonconcurrence will be supported by counsel's written rationale. The CO will indicate concurrence or nonconcurrence with legal counsel's recommendation on the template, and sign and date it. If the CO agrees with legal counsel's nonconcurrence, the CO will notify their supervisor who will inform the program office of the denial and provide the rationale. The supervisor will copy the ACPO, DCPO and designated ratification approving official on the notification of disapproval. If the CO determines that the ratification should be approved notwithstanding legal advice to the contrary, the CO must attach a written rationale to the ratification request and forward it through the supervisory chain to the CPO for review.

(5) The CO must ensure that all requirements set forth at FAR 1.602-3(c), including the determination of price reasonableness, are met and the supporting documentation is attached to the request. The CO will indicate a recommendation on the request, and sign and date it.

(6) In the case of an IAA, if the CO determines that ratification should be made, the CO will prepare the determination and findings required by FAR 17.503 and attach it to the ratification request.

(7) Upon completing the CO's portion of the request, the CO will provide it, through the supervisory chain to the CPO or designee, as directed. The CPO or designee will indicate

approval or disapproval and sign and date the request. If the approving official disapproves the request, the approving official will notify the CO, supervisor and ACPO. The supervisor will notify the program office of the disapproval and update the tracking sheet.

(8) After the CPO or designee has approved the ratification, the responsible CO will prepare and execute the ratifying action (*e.g.*, contract or IAA), unless the value of the action exceeds the CO's warrant. In such case, the action will be executed by a higher-level CO.

(9) The CO will place the entire approved ratification request in the contract or IAA file located within the acquisition management system and update the tracking sheet.

(f) *Execution of ratification.* Immediately upon CPO notification of approval to ratify an action, the program office must prepare a requisition, with appropriate funding and route to the CO through the acquisition management system. The program office may process the requisition prior to receiving approval to ratify the action, but until the approval is granted by the CPO to ratify the action, the CO will not award a contract or purchase order to ratify the action.

2401.603 – Selection, appointment, and termination of appointment for COs.

The CPO is the sole HUD official with delegated authority to appoint COs and to modify, transfer, reinstate, and terminate CO appointments in accordance with FAR 1.603, HUDAR 2401.603, and HUD's published delegations of procurement authority.

2401.603-2 – Selection.

Except for delegations to the Departmental officials listed in Handbook 2401.601-70(b)(1), the CPO will select COs in accordance with FAR Subpart 1.6, HUDAR 2401.6, Office of Federal Procurement Policy (OFPP) Letter 05-01, the FAC-C, and HUD's Acquisition Career Management Program (ACMP) qualification requirements (see Handbook 2401.601-70(a)). The CPO is responsible for determining, in accordance with the ACMP, the appropriate authority level for each CO delegation based on mission requirements and the candidate's experience, training, education, business acumen, and judgement. The CPO may also examine and consider prior conduct of individuals when delegating authority. The ACM advises and provides technical support to the CPO (*e.g.*, verifying candidate FAC-C credentials or reviewing requests for approval of alternative methods of meeting warrant level requirements).

2401.603-3 – Appointment.

(a) *COs.*

(1) *Certificate of appointment.* The CPO will delegate contracting authority on Standard Form 1402, *Certificate of Appointment* (*i.e.*, "warrant"). The delegation will include the CO's name, authority and any limits on it, the effective date, the expiration date (if temporary), and a unique sequential number.

(2) *Statement of authority.*

(i) The CO's authority will be expressed in terms of a dollar value up to the total of which the CO may obligate the government.

(ii) For the award of other than indefinite-delivery type new contracts, the CO's warrant must provide sufficient delegated authority to obligate the total dollar value of the proposed contract, including the basic award and all options.

(iii) For the award of HUD indefinite-delivery contracts, the CO's warrant must provide sufficient delegated authority to obligate the dollar value of the contract as follows:

(A) For definite-quantity contracts, the value of the total definite-quantity;

(B) For indefinite-quantity contracts, the value of the maximum quantity. If an indefinite-quantity contract specifies separate maximum quantities for each contract period (*e.g.*, base and four option years), the value of the sum of the maximum quantities for all contract periods must be within the CO's delegated authority; and

(C) For requirements contracts, the estimated total value of items or services to be ordered under the contract.

(D) For task orders, the CO may issue task orders with a value up to their warrant authority.

(iv) For the award of individual task or delivery orders under indefinite-delivery contracts awarded by other Federal agencies (*e.g.*, GSA FSS contracts), the CO's warrant must provide sufficient delegated authority to obligate the total value of the individual order.

(v) For IAAs, the CO's warrant must provide sufficient delegated authority to obligate the total value of the IAA including any options.

(vi) For modifications to a contract, task order, delivery order or IAA that add funds, including options or incremental funding, the CO's warrant must provide sufficient delegated authority to obligate the total estimated value of the modification.

(b) *Contracting Officer Warrant Panel (COWP)*. The CPO may require a COWP to assess the qualifications of candidates for warrants, regardless of threshold. The panel is an advisory body and the CPO is not bound by its recommendations. Further information and required forms are contained within *OCPO's Acquisition Career Management Program Guide*.

(c) *Government purchase card holders*. All procurement authority under the GPC Program stems from the authority delegated by the CPO to another organization to issue delegations for purchase

authority under the micro-purchase threshold to Cardholder(s). Pursuant to the FAR 1.603-3, micro-purchase authority is not required to be granted on a Standard Form (SF) 1402. The Agency-wide responsibilities, duties and data visibility are reflected in the latest *HUD Government Purchase Card Program Policy Guide*.

2401.603-4 – Termination.

A CO's appointment may be terminated at any time for cause. Such cause may include but not be limited to failure to meet required continuing education requirements. Any termination or change to a CO's appointment will be made by letter from the SPE to the CO. The CO's supervisor will be copied on the letter.

2401.604 – Contracting Officer Representative.

2401.604-70 – Responsibilities.

(a) Basic responsibilities.

(1) *COR*. The COR is expected to be knowledgeable of the technical requirements of the contract to which the COR is assigned, or to have ready access to such expertise within the program or subject area (*e.g.*, through a Technical Monitor). The COR is usually an employee of the HUD program office that initiates and/or has primary responsibility for the contract.

(i) *Technical advice and guidance to contractors*. The COR serves as the CO's primary liaison with the contractor regarding the technical aspects of a contract. The COR is responsible for giving contractors technical advice and guidance related to the work required by the contract. However, the COR may not provide direction that would cause the contractor to perform work outside the scope of the contract or create financial obligations against the Government.

(ii) *Evaluation of contractor performance*. The COR is the principal judge of a contractor's performance, including the quality and timeliness of products and services, and when applicable, the contractor's ability to control costs of performance.

(iii) *Pre-award assistance*. The COR may contribute significantly to the front end of the contracting process (*e.g.*, by assisting the CO in the development of work statements, performing market research, obtaining needed internal HUD approvals, and serving on technical evaluation panels).

(iv) *Contract monitoring*. The COR's contract administration-related duties and responsibilities are described in Handbook 2442.302-71.

(v) *Contract-related documentation*. The COR's responsibilities for maintaining contract-related documentation are described in Handbook 2404.802-72.

Subchapter 2401.70 – Reviews, Approvals, and Clearances**2401.7001 – Internal OCPO approval of contract actions.**

(a) The following contract actions require review and approval by OCPO officials at the levels specified in paragraph (b) herein prior to their award or execution:

- (1) New contracts (Note: For indefinite-quantity contracts, the maximum quantity value will determine the approval level);
- (2) Interagency direct acquisitions;
- (3) Delivery and task orders issued under HUD indefinite-delivery contracts;
- (4) Unpriced task orders resulting from indefinite-quantity contract task order competitions;
- (5) Orders issued against GSA multiple award schedule contracts for technical and professional services;
- (6) Solicitations for any of the actions listed in (1) through (5) above;
- (7) Modifications that:
 - (i) Add new work (see also paragraph (f) below);
 - (ii) Definitize new work; or
 - (iii) Make cumulative changes, plus or minus, to the contract's value that reach a threshold in paragraph (b)(3) (*e.g.*, a supplemental agreement resulting from a change order that increases part of a contract by \$6 million and reduces other parts by \$4 million yielding a cumulative change of \$10 million);
- (8) Contract terminations; and
- (9) Proposed contracts exceeding five (5) years in total duration as prescribed in paragraph (c).

(b) Review and approval of the actions described in paragraphs (a)(1) through (a)(8) must be obtained at the following levels:

- (1) For actions up to \$1 million, the CO;
- (2) For actions exceeding \$1 million up to \$10 million, one level above the CO (*e.g.*, Branch Chief or Division Director);

- (3) For actions exceeding \$10 million up to \$50 million, the responsible ACPO; and
 - (4) For actions exceeding \$50 million, the DCPO.
- (c) The CPO must approve proposed contract periods exceeding five years (see paragraph (a)(9)).
- (d) The CO will review all actions subject to higher level review to ensure their accuracy and completeness before submitting the actions to the higher-level authority.
- (e) Proposed actions and all supporting documentation will be provided to the reviewing official through the CO's chain of command.
- (f) Each official in the chain of command above the CO but below the responsible reviewing official must review the action, provide feedback and require necessary changes. In addition, any higher-level official above the responsible reviewing official may elect to review any solicitation or proposed action. In the exceptional case where the individual who would be the reviewing official is also acting as the CO responsible for executing the action, a review at either one level above the CO or a peer review shall be obtained. Contract specialists and COs will obtain peer reviews of any action prior to its submission for higher level review. Peer reviews will be conducted by individuals of the same general schedule grade or higher who are knowledgeable and proficient in the subject acquisition area. Peer reviews performed by individuals below the general schedule grade of the CO or contract specialist will be pre-approved by the ACPO responsible for the action.
- (g) The reviews required by this section do not relieve the CO of responsibility to obtain all other required or applicable internal (*e.g.*, legal reviews consistent with FAR, HUDAR, and this Handbook 2210.3) and external (*e.g.*, Office of Federal Contracts Compliance Programs, Department of Labor) reviews, approvals and clearances (see section 2401.7002).
- (h) The requirements of this section will not be applicable to the following justifications as other approvals are established for these actions elsewhere:
- (1) Justification for other than full and open competition required by FAR 6.304 (also see Handbook 2406.303);
 - (2) Justification of limited source consideration for Federal Supply Schedule orders required by FAR 8.405-6 (also see Handbook 2408.405-6); and
 - (3) Justification for exception to fair opportunity required by FAR 16.505 (also see Handbook 2416.505).

2401.7002 – Departmental approvals and clearances.

- (a) The program office will obtain written approval for proposed procurement actions and include it in the request for contract services for the following services and equipment (see Handbook 2407.102):

- (1) Legal services – OGC. Approval is required for procurements specifically for legal services and procurements under which such services are part of a larger effort. Approvals may be made on an individual or class basis.
- (2) Training services –HUDLEARN. This does not include individual training requests by HUD employees to attend commercially available training using the form SF-182.
- (3) Audio-visual production – Office of Administration. (Note: No clearance is required for the videotaping of oral presentations made by offerors for competitive procurements.)
- (4) Publication of public information materials – Office of Public Affairs. (Note: All information to be disseminated to the public is subject to the requirements of the Department’s Information Quality Guidelines issued in accordance with the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies” published September 28, 2001; see Federal Register Volume 66, Number 189).
- (5) Questionnaires – Office of Administration, Policy and Management and Office of Administrative Services for any questionnaires related to OCIO-related procurement activities. (Note: Questionnaires or any other form of information collection activity and all requests for information, including telephonic interviews and invitations to submit information must conform to the requirements of the Paperwork Reduction Act and be approved by OMB.)
- (6) Printing and Design of Graphics and Printed Materials - Office of Administration, Documents and Distribution Division, Printing and Graphic Arts Branch.
- (7) Forms – Office of Administration, Document and Distribution Division, Records Management Branch.
- (8) Contractors occupying HUD space – Chief Administration Officer, Chief Information Officer, Chief Human Capital Officer, and Chief Procurement Officer.
- (9) Telecommunications equipment, management or services – Office of Administration, Space and Assets Management Division, Telecommunications Management Branch for Headquarters only. For Field Office contact the Office of Field Support Services.
- (10) Micrographic Equipment and Services – Office of Administration, Document and Distribution Division, Records Management Branch.
- (11) Other office equipment and services – Office of Administration, Space and Asset Management Division.
- (12) Overtime payment for contractor employees – Head of the program office.

(13) Reimbursable Work Authorizations (GSA) – Office of Administration, Space and Asset Management Division for Headquarters only. For Field Office contact the Office of Field Support Services.

(b) The CO must ensure that approval by the appropriate office has been obtained and include the documentation in the official contract file in the acquisition management system.

2401.7003 – Legal review.

(a) The CO is ultimately responsible for ensuring that all procurement actions are processed in a legal, ethical and compliant manner. The OGC supports the procurement process by providing legal opinions and business reviews in support of the contracting activity. The CO and OGC's combined effort ensure that acquisitions are legally sufficient, defensible in the face of legal opposition, and do not place undue legal risk on the government through its stated terms and conditions.

(b) The program office, the TEP and the contract specialist support the CO in addressing legal comments and ensuring legal sufficiency.

(c) The following are the types of legal comments that may be received from OGC during a legal review for solicitations and technical evaluation reports. OGC will ensure a thorough review including both perspectives whenever a legal review is required:

(1) *Legal sufficiency comments.* Legal counsel will review actions and documents to determine their legal sufficiency to mitigate litigation risk(s). Legal sufficiency is defined as compliance with applicable laws, regulations (*e.g.*, FAR and HUDAR), and policies. Comments will make specific citations that render the determination of legal insufficiency. Some examples of legal sufficiency comments include: a) failure to comply with FAR Part 52 to insert a clause, b) failure to follow a specific mandatory template or c) failure to obtain a waiver as required by OCPO policy. COs shall make disposition of legal sufficiency opinions and recommendations as described herein.

(2) *Business comments.* At their discretion, legal counsel may review proposed business approaches, decisions, and/or methods of execution and provide related advice and recommendations. Some examples of business comments include: (a) using inappropriate terminology such as “responsiveness” versus “conforming” in FAR Part 15 acquisitions, or (b) moving paragraphs for greater clarity. However, these business reviews and recommendations are advisory, and COs are not required to address the advice back to counsel. However, the CO will document the file for subsequent reviewers that such advice was or was not followed and, if not, why not.

(d) General.

(1) Actions shall be submitted for legal review in accordance with current regulations and policy. This policy is not intended to change any regulation. In the event of a conflict, the written regulation shall take precedent over this policy in governing the process.

(2) The CO is responsible for ensuring procurements comply with statute, regulation, policies and procedures. To further support this, the FAR states that the CO must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract. A non-warranted contract specialist (CS) may be assigned to work on the project and perform many of the duties regarding the action, but the authority or accountability of the CO responsibilities in contract award cannot be delegated.

(3) The role of OGC in the procurement process is as an advisor in support of the CO and the procurement process. The FAR states that the CO must request and consider the advice of specialists in law and further defines the required role of OGC at various points in the acquisition process.

(4) The CO is responsible for ensuring OGC, as an integral stakeholder, is invited to participate in the Integrated Acquisition Team meetings.

(5) Solicitations over \$10 million will have a Solicitation Panel Review unless waived by the Deputy Chief Procurement Officer. In addition to other stakeholders such as pertinent program personnel, the CO will ensure that OGC is invited to participate in all Solicitation Panel Reviews.

(6) All solicitations requiring OGC review in accordance with HUD policy and all technical evaluation reports will go through a single round of legal review. Additional reviews may be requested by the CO or a manager with responsibility over the procuring contracting office if deemed necessary.

(7) Documents will be routed to OGC after all non-legal formal reviews are complete.

(8) The CO shall include pertinent program personnel in the reconciliation of legal review comments to the maximum extent possible.

(9) Legal sufficiency reviews for solicitations and technical evaluation reports regarding acquisitions exceeding \$10 million (base and options) will be conducted following the process as delineated below.

(e) Process for legal review routing in PRISM.

Unless a paper process is required, solicitations and technical evaluation reports will be routed to OGC in PRISM and OGC will submit comments to the CO as follows:

(1) Step One - Documents requiring legal review will be routed via PRISM to OGC for review.

(2) Step Two - OGC will assign and reroute the document in PRISM to the reviewing attorney.

(3) Step Three - The reviewing attorney will review the document(s) and provide written comments to the CO, responsible manager, and ACPO. Legal comments will be identified as “Legal Sufficiency” or “Business Comment” as defined in Section 6 above.

(4) Step Four - The reviewing attorney will upload his/her comments to PRISM Supporting Documents and then mark the document reviewed in the system.

(f) Process to reconcile legal comments regarding solicitations. The following represents the policies associated with the disposition of OGC comments associated with legal reviews of solicitations:

(1) Upon receipt of the legal review, the CS, the CO, the OCPO official one level above the responsible CO (unless the CO is a supervisor), the Program Representative and the reviewing attorney will meet to discuss the review comments, clarify any comments not understood, and discuss potential remedies.

(2) After the meeting, the CO will reconcile all legal comments and complete a memo of disposition of legal comments for the file. This memo will detail what action was taken to resolve each comment, and the memo will be uploaded and maintained in the PRISM contract file. Any unreconciled disagreement with a legal insufficiency comment shall be documented and forwarded to the Deputy CPO for resolution.

(3) The CO shall ensure that all changes resulting from the disposition of legal comments are made to the solicitation before proceeding with the procurement. The disposition of all legal comments must be verified by the Approver on the approval route in PRISM before posting the solicitation.

(g) Process to reconcile legal comments regarding technical evaluation reports. The following represents the policies associated with the disposition of OGC comments associated with legal reviews of technical evaluation reports:

(1) The CS and CO will review the OGC comments with his/her supervisor, and the review comments will be provided and discussed with the Technical Evaluation Panel (TEP) members. At that time, TEP members will be advised of any ambiguities and provided recommendations by the CO on how to resolve outstanding items. As requested by the TEP, OGC and the CO may detail how legal sufficiency may be obtained.

(2) A meeting will be held with the CS, the CO, the voting and non-voting TEP members (but not TEP Advisors), the CO’s supervisor, and the reviewing attorney to discuss the review comments, clarify any comments not understood, and discuss potential remedies.

(3) After the meeting, the CO will ensure all legal comments are reconciled and complete a memo of disposition of legal comments for the file. This memo will detail the actions taken to remediate each individual legal comment and the memo will be uploaded into the PRISM contract file.

(4) Any unreconciled disagreement with a legal insufficiency comment shall be documented and forwarded to the Deputy CPO for resolution.

(5) The CO will ensure that all changes resulting from the disposition of legal comments are made to the TEP report. The CO will then provide the TEP report, OGC comments, and the memo of disposition to the ACPO for review.

(6) Upon clearance by the ACPO to proceed, the CO may proceed with the procurement.

(h) *Pre-award reviews.* The CO shall obtain the legal reviews for proposed contracts \$10 million and above. Acquisitions less than \$10 million are not subject to legal review. Legal does not review every document or step in the procurement process. Actions which require legal review are subject to review at the following steps in the contracting process:

(1) *Pre-solicitation (i.e., prior to the issuance of the solicitation).* Documentation required for the review must include the following:

(i) Required determinations;

(ii) Solicitation document;

(iii) Technical evaluation plan including all evaluation factors and sub-factors included in the RFP;

(iv) Independent Government Cost Estimate (IGCE); and

(v) Documentation of communication with industry including disposition of pre-solicitation questions posed by potential offerors (*e.g.*, pre-solicitation conference Q&As).

(2) *Pre-negotiation (i.e., after completion of initial proposal evaluation and prior to the commencement of discussions when discussions with competing offerors will be held)* (see FAR 15.306). In addition to the documentation required in paragraph (1), documentation required for the review must include the following:

(i) Documentation of disposition of questions posed by offerors during solicitation period (provided for legal review prior to any evaluation of proposals, if possible);

(ii) Solicitation amendments (provided for legal review prior to evaluation of proposals, if possible);

(iii) Price analysis;

(iv) TEP findings and report(s);

(v) Competitive range determination, if applicable; and

(vi) Pre-negotiation objectives, including the written discussion questions.

(3) *Pre-award* (i.e., after source selection and prior to executing the contract document). In addition to the documentation required in paragraphs (1) and (2), documentation required for the review must include the following when applicable to the source selection:

(i) Discussion questions and responses (written correspondence or transcript of oral discussion questions and answers);

(ii) Re-determination of competitive range, if applicable;

(iii) Final TEP report;

(iv) Tradeoff recommendation;

(iv) Source selection authority's source selection determination; and

(v) Price analysis.

(i) *Post-award reviews*.

(1) *Modifications*. The CO shall obtain legal reviews of the following modifications:

(i) Proposed change orders to be made under the contract's Changes clause when the change increases the contract value by more than 10%; and

(ii) Any proposed modification that:

(A) Adds new work or deliverable requirements resulting in an increase in contract price by more than 10%; and

(B) Increases the maximum quantity of an indefinite-delivery, indefinite-quantity contract.

(Note: The changes listed above require the execution and approval of a justification for other than full and open competition; see Handbook 2406.)

(2) *FAR and HUDAR required legal reviews*. The FAR and HUDAR require legal reviews for various post-award actions. The most commonly occurring are listed below. The *Specific Requirements for Legal Review* table is located on the OCPO intranet website. This list is not exhaustive. COs should always consult the FAR or HUDAR section(s) governing the contractual action to verify whether legal review is required.

(i) *Novation and change-of-name agreements* (see Handbook 2442.1203). The CO will provide legal counsel with:

(A) A copy of the proposed novation (see FAR 42.1204(i)) or change-of-name (see FAR 42.1205(b)) agreement;

(B) The information described in FAR 42.1204(e) and (f), and 42.1205(a); and

(C) Any other supporting or relevant documentation.

(ii) *Terminations and settlements.* The CO will provide legal counsel with:

(A) For proposed terminations (see FAR 12.403(b)):

(1) The type of termination and the CO's rationale for its selection;

(2) A copy of the show cause letter or cure notice, if either has been issued yet. Ideally, legal counsel should review the show cause letter or cure notice prior to issuance to the contractor;

(3) The contract file, including all relevant supporting documentation (e.g., contract monitoring reports and correspondence); and

(4) The draft termination notice.

(B) For proposed settlement agreements (see Handbook 2449.111), the termination case file containing:

(1) The notice of termination;

(2) Copy of the show cause letter or cure notice and relevant correspondence;

(3) The contractor's settlement proposal;

(4) A copy of the CO's determination of the amount due to the contractor and supporting pricing documentation (e.g., analysis); and

(5) The CO's settlement negotiation memorandum.

(C) For proposed damages to be assessed a contractor as a result of a default (see Handbook 2449.402-7).

(1) The dollar amount of the damages broken down into its component costs; and

(2) The CO's rationale for the damages, including all supporting documentation.

(iii) *Ratification of unauthorized commitments* (see Handbook 2401.602-3(c)(5) and (d)).

(iv) *Protests* (see Handbook Chapter 2433).

(v) *CO decisions on claims under Public Law 85-804* (see FAR 33.205(a)).

(vi) *Personal services* (see FAR 37.104(e)).

(j) *Matters concerning fiscal law.* Matters concerning fiscal law include the obligation and deobligation of funds; severable and nonseverable services; the severable services exception; the bona fide needs rule; the Antideficiency Act; and other such fiscal law questions addressed in the GAO Redbook. Questions regarding matters concerning fiscal law, including the appropriate use and timing of funds for any contract action, should be directed to the legal counsel in accordance with the Administrative Control of Funds Policies Handbook, 1830.2-REV-6.

(k) *Reviews of lower dollar-value contracts.* COs may seek legal reviews for proposed contracts with an anticipated total value of less than \$10 million, when in the judgement of the CO, a legal issue exists (*e.g.* proprietary data rights, possible performance of an inherently governmental function (FAR 7.5) or personal services (FAR 37.104), bona fide need questions, or funding issues raised by prior Government Accountability Officer (GAO) decisions concerning appropriations).

(l) *Review of IAAs.* The CO will obtain legal sufficiency reviews of proposed IAAs authorized by the Economy Act (31 U.S.C. 1535) with an expected total value of \$10 million or more. Reviews for IAAs and modification for recurring services/requirements executed pursuant to the Economy Act (31 U.S.C. 1535), where prior IAAs for the same services have been reviewed by OGC, are waived from further OGC review. However, all new IAAs for assisted acquisitions (*e.g.* GSA FedSim) and modifications to existing IAAs to add new work require OGC review.

(m) *Requesting reviews.*

(1) Before initiating a request for legal review, the CO must review the action or document, obtain all required internal OCPO reviews, and either be satisfied with the sufficiency of the action or document, or identify the areas or matters that the CO believes warrant legal counsel's attention.

(2) The OCPO official one level above the responsible CO must concur in the request unless the requester is a supervisor.

(3) Higher-level OCPO officials (*e.g.*, an ACPO, Deputy CPO or the CPO) may initiate requests for legal review (*e.g.*, pursuant to HUDAR 2433.106, Protests to the Agency).

(4) To afford legal counsel sufficient time to conduct reviews, the CO will submit review requests as soon as the issue requiring review has been identified. Whether the request for review is for a specific issue or when routine reviews are required, contracting personnel will build time into the procurement acquisition lead time (PALT) and the individual acquisition plan to accommodate a reasonable review period.

(n) *Required documentation.* Unless specifically advised otherwise by counsel, the CO will provide the complete contract file containing all the documentation required at the step of the contracting process that the review is conducted with the request. OGC will not begin the review until it has received all relevant documentation. All supporting documentation will normally be submitted to counsel via the acquisition management system.

(o) *Documenting results of reviews.*

(1) FAR 4.803(a)(24), Contents of Contract Files, requires that contract files include evidence of legal reviews applicable to contractual actions.

(2) The CO will ensure that the contract file documents all legal reviews including the disposition of legal counsel recommendations, clearly indicating which were accepted and which were rejected. The CO will maintain a copy of all communication in the contract file located in the acquisition management system.

(3) Documentation of legal reviews will be in the form of written correspondence (either hardcopy memorandum or electronic) from legal counsel to the CO.

(4) The CO will ensure that the significant results of legal reviews pertinent to a contract award or modification are captured in the Price Negotiation Memorandum (PNM) for the contract award or modification.

(p) *Action on affected items.* The CO will take no definitive action regarding any document or action requiring legal review until the results of the review have been obtained, duly considered and all conflicting items resolved.

(q) *Informal communication.* Nothing in this section prohibits informal, *ad hoc* communication between contracting personnel and legal counsel concerning any procurement or contract administration matter (*e.g.*, questions concerning conflicts of interest, inherently governmental activities, personal vs. non-personal services, etc.). However, the CO/CS shall seek counsel's advice only after conducting research and consulting with peers and supervisors to try to address the issue first. COs are responsible for obtaining legal counsel's advice whenever they believe a legal question or matter has, or may have, a bearing upon the contract.

(r) *Specific requirements.* Specific requirements for legal review is located on the OCPO website.

(s) *Exceptions to required legal reviews.* The Chief Procurement Officer (CPO) or designee must approve exceptions to this policy. Exceptions to legal reviews and approvals that are required by the FAR and HUDAR may only be made via formal deviations executed by the CPO in accordance with

FAR subpart 1.4 and HUDAR subpart 2401.4. Requests for exceptions must be written and include the justification. The CPO's approval and the request must be maintained in the electronic contract file

2401.7004 – Office of Small and Disadvantaged Business Utilization (OSDBU) reviews.

(a) The OSDBU will review all requisitions for contract actions for new work (including new contracts, task orders and modifications other than options) expected to exceed the simplified acquisition threshold to ensure that HUD's small business contracting goals are addressed and opportunities for small business participation are identified.

(b) The program office is responsible for ensuring that the requisition is routed through the OSDBU for review utilizing the acquisition management system. Any requisition received by the contracting office without the OSDBU's review will be returned without action to the program office for submission to the OSDBU for such review.

(c) At its discretion, the OSDBU may waive the requirement for the review of any individual acquisition or group of acquisitions.

(d) The OSDBU will review acquisitions within three (3) business days.

2401.7005 – Office of Small Business Administration (SBA) Procurement Center Representative (PCR) reviews.

(a) COs and contract specialists must ensure that any proposed acquisition that meets the conditions in FAR 19.202-1(e)(1) are provided to the SBA for review no later than 30 days before issuance of the solicitation. Please note that this does not include all non-set-aside acquisitions.

(b) The SBA notice and review may occur concurrent with other processing steps before issuance of the solicitation. SBA's role is advisory. COs shall attempt to resolve differences with the SBA PCR informally. However, if the CO disagrees with the SBA PCR's recommendations, then the CO must document the contract file as required by FAR 19.202-1(e)(4).

(c) The [*Small Business Administration Coordination Record, which can be found on the OCPO template page at the following URL*](#), must be used to document the coordination and review of the PCR/SBA:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) If for any reason the PCR is unavailable, reviews must be performed by the SBA Office of Government Contracting Area Office servicing your geographical area. You can find the office servicing your area on the Small Business Administration website.

Chapter 2402 – Definitions of Words and Terms

2402.000 – Scope of chapter.

- (a) This chapter defines words and terms that are frequently used in the handbook.
- (b) Commonly used words and terms specific to Federal acquisition (*e.g.*, “acquisition,” “acquisition planning,” “contract,” or “contracting officer”) shall have the meanings provided in FAR Subpart 2.1 and HUDAR Subpart 2402.1, unless otherwise defined in this handbook. Users of this handbook must always consult FAR Subpart 2.1 and HUDAR Subpart 2402.1 if they do not find a definition for specific words or terms in this handbook.

Subchapter 2402.1 – Definitions

2402.101 – Definitions.

“Accountable property” means all personal property that is subject to accountability by appropriate authority. Such property includes capitalized and non-capitalized equipment with an acquisition cost of \$1,000 or more per item or has been deemed pilferable by the Property Manager. Items with recurring monthly charges with life cycle cost of more than \$1,000, such as cellular phones, must be included as accountable property. Accountability is also required for items purchased utilizing the Governmentwide Purchase Card.

“Acquisition Management System” means the Department’s automated acquisition system. The acquisition management system includes the following automated functionalities:

- Acquisition planning and portfolio management;
- Contract/purchase request generation, routing and approvals;
- Creation of solicitations, contracts, and modifications;
- Interface with financial systems to improve invoice tracking, payments, funding reservation and obligations;
- Enhanced reporting; and
- Contract filing and retrieval.

“Acquisition Review Council” means a panel chaired by the Deputy OCPO or designee, ACPO for Policy, Systems and Risk Management or the ACPO’s designee, legal counsel from the Office of General Counsel (OGC) Procurement Law Division (PLD); the ACPO of the Operations organization providing the presentation; and a representative from the Office of Small and Disadvantaged Business Utilization (OSDBU). The primary purpose of the panel is to promote effective and timely collaboration between the program customer and the contracting officer and contract specialist early in acquisition planning process and to ensure HUD’s procurements comply with the FAR, HUDAR and HUDAR Handbook 2210.3.

“Alternate Contracting Officer Representative (COR)” means the COR who performs the duties of the COR in the absence of the primary COR.

“Assistant Chief Procurement Officer” means the primary authority managing a contracting office (as defined herein) within OCPO.

“Business Utilization Development Specialist” means the HUD employee located within the Office of the Small and Disadvantaged Business Utilization who supports the Director in performing the functions described at FAR 19.201(d) and supports OCPO in performing the functions described at HUDAR 2419.201(e). The BUDS are commonly referred to as Small Business Specialists (SBS). For the purposes of this handbook, a BUDS will be referred to as an SBS.

“Capitalized property” means an individual asset, as defined by the Chief Financial Officer, with a single dollar value of \$25,000 or a group purchase value of \$100,000 or more, and an estimated life-span of two or more years.

“Chief Acquisition Officer” means the HUD official designated pursuant to the Services Acquisition Reform Act (SARA) to advise and assist the Secretary and other Department officials to ensure that HUD’s mission is achieved through the management of HUD’s acquisition activity (see also Handbook 2401.601-70). HUD’s Deputy Secretary has been designated as the CAO.

“Contract administration” means the actions taken with regard to a contract after it has been awarded to ensure that both the contractor and the Government meet the terms of the contract and that the contract is successfully performed. Contracting officers (CO)s are ultimately responsible for ensuring that contracts are administered in accordance with FAR Part 42.

“Contract administration team” means the HUD personnel responsible for ensuring the successful completion of a contract. The team normally includes the CO or contract specialist assigned to administer the contract, the COR, any employees supporting the COR with technical subject matter expertise, legal counsel, etc.

“Contract file” means an organized collection of documents that constitutes a complete history of a contractual action. A contract file may consist of paper or electronic records which are uploaded into the acquisition management system.

“Contractor Performance Assessment Reporting System” means a web-enabled application that collects and manages the library of automated Contractor Performance Assessment Reports (CPAR). A CPAR assesses a contractor’s performance and provides a record, both positive and negative, on a given contractor during a specific period of time. Each assessment is based on objective facts and supported by program and contract management data, such as cost performance reports, customer comments, quality reviews, technical interchange meetings, financial solvency assessments, construction/production management reviews, contractor operations reviews, functional performance evaluations, and earned contract incentives.

“Contract specialist” means an employee of a HUD contracting office, who supports the contracting officer by performing pre-award and post-award contract assignments in support of local or centralized procurement activity or in the audit/review of that activity. A contract specialist vested with a warrant is referred to as a Contracting Officer. A contract specialist is responsible for the day-to-day actions. The contract specialist performs many of the substantive contracting

duties and functions for which the contracting officer is ultimately responsible (*e.g.*, preparing solicitations, evaluating proposed costs or prices, conducting negotiations, and preparing determinations and contract documents). Unless specifically indicated, the use of “contracting officer” in this handbook shall refer to the contract specialist when the specialist has responsibility for or performs the action or function described.

“*Contracting Office*” means one of the primary operational contracting entities within OCPO headed by an ACPO.

“*Contracting Officer’s Representative*” has the meaning set forth at FAR 2.101.

“*Chief Procurement Officer*” see “*Head of the Contracting Activity*”.

“*Department*” means the Department of Housing and Urban Development or HUD.

“*Federal Information Technology Acquisition Reform Act (FITARA)*” refers to the part of the [National Defense Authorization Act for Fiscal Year 2015](#) (Title VIII, Subtitle D, [H.R. 3979](#)) that made changes to the way the U.S. federal government buys and manages computer technology. The bill increased the power of the [Chief Information Officers](#) (CIO) within [federal agencies](#) so that they could be more effective. Each agency is reduced to having only one CIO in the agency, who is then responsible for the success and failure of all IT projects in that agency.

“*Field*” refers to HUD offices, activities, and functions located or conducted outside of HUD Headquarters. Such offices, activities and functions may or may not be organizationally assigned or report to Headquarters.

“*Government*” means the United States Government or Federal government.

“*Government Technical Representative*” shall have the same meaning as Contracting Officer’s Representative and is referenced to as COR in this handbook.

“*Head of the Contracting Activity*” means the HUD official who has the authority and responsibility for the supervision and direction of the contracting activity (see FAR 2.101). The Chief Procurement Officer (CPO) serves as OCPO’s sole HCA (see HUDAR 2402.101).

“*Integrated Acquisition Team*” is an ad hoc group of contracting, program, and technical personnel assembled to accomplish an acquisition. IAT members should be involved from planning through completion of the contract action.

“*Monitoring*” means the day-to-day oversight of the contractor’s performance and compliance with the terms of its contract. The COR assigned to a contract has primary responsibility for monitoring it.

“*Post-award*” refers to those activities that take place after the execution of a contract.

“*Pre-award*” refers to those activities that take place from the initial planning through the execution of a contract.

“*Primary COR*” refers to the COR, when multiple CORs are assigned to a contract, who coordinates the work of subordinate CORs and is the central communicator to the CO. The Primary COR, when an Alternate COR has been designated, is the principal COR who performs all the duties and responsibilities identified in the Delegation of Authority memorandum, and when absent, the Alternate performs the principal duties.

“*Primary Organization Head (POH)*” means the senior representative of a principal HUD organizational element. The Primary Organization Heads of HUD include the Assistant Secretaries and equivalent managers (*e.g.*, President of GNMA, Inspector General, General Counsel, and Chief Procurement Officer).

“*Program Office*” means an organizational component of the Department that initiates which has primary responsibility for, or interest in, an acquisition (*e.g.*, Office of Public and Indian Housing or Office of Single Family Housing). In the field, the program office may be located within a Regional or Field Office or other organizational component (*e.g.*, Single Family Homeownership Center or Multifamily HUB) that has been authorized or designated by its parent Headquarters office to obtain services or supplies via procurement contracts.

“*Program mission*” means the responsibilities for meeting Departmental needs that are assigned to a specific program office.

“*Project and Planning Management (PPM) Life Cycle*” means the methodology used by HUD’s OCIO for the planning, design, development, and implementation of IT systems and resources, including the contracts that support such systems and resources. The PPM Life Cycle provides the context for the HUD IT governance process and describes the interdependencies between its project management, investment management, and capital management components.

“*Subordinate COR*” means a COR who has been delegated a set of duties under a contract where multiple CORs have been assigned. The Subordinate COR coordinates all duties and responsibilities with, and communications through, the primary COR to the CO.

2402.170 – Commonly used acronyms and abbreviations.

“ACMP” means Acquisition Career Management Program.

“ACO” means Administrative Contracting Officer.

“ACPO” means Assistant Chief Procurement Officer.

“ACRN” means Accounting Classification Reference Number.

“ACWP” means Actual Cost of Work Performed.

“AEO” means Agency Ethics Official.

“ALU” means Acquisition Liaison Unit.

“AO” means Assessing Official.

“AOR” means Assessing Official Representative.

“APP” means Advanced Procurement Plan.

“ARC” means Acquisition Review Council.

“ARC” means Administrative Resource Center.

“ARRT” means Acquisition Requirement Roadmap Tool.

“ASAP” means Annual Strategic Acquisition Plan.

“BFS” means Bureau of Fiscal Service.

“BPA” means Blanket Purchase Agreement.

“BCA” means Board of Contract Appeals.

“BCWP” means Budgeted Cost of Work Performed.

“BCWS” means Budgeted Cost of Work Scheduled.

“CAO” means Chief Acquisition Officer.

“CAS” means Cost Accounting Standards.

“CFO” means Chief Financial Officer.

“CFR” means Code of Federal Regulations.

“CICA” means Competition in Contracting Act.

“CID” means Commercial Item Description.

“CIO” means Chief Information Officer.

“CISO” means Chief Information Security Officer.

“CO” means Contracting Officer.

“COC” means Certificate of Competency.

“COR” means Contracting Officer’s Representative.

“COTS” means Commercially Available Off the Shelf Item.

“CPARS” means Contractor Performance Assessment Reporting System.

“CPO” means Chief Procurement Officer.

“CR” means Contractor Representative.

“CUI” means Controlled Unclassified Information.

“DCPO” means Deputy CPO.

“DEC” means Departmental Enforcement Center.

“D&F” means Determinations and Findings.

“EIT” means Electronic and Information Technology.

“FAC-C” means Federal Acquisition Certification in Contracting.

“FAC-COR” means Federal Acquisition Certification for Contracting Officer Representatives.

“FAC-P/PM” means Federal Acquisition Certification for Program/Project Managers.

“FAITAS” means Federal Acquisition Institute Training Application System.

“FAR” means Federal Acquisition Regulation.

“FASA” means Federal Acquisition Streamlining Act.

“FFP” means Firm-Fixed Price.

“FHA” means the Federal Housing Administration.

“FITARA” means Federal Information Technology Reform Act.

“FPDS-NG” means Federal Procurement Data System – Next Generation.

“FRP” means Final Revised Proposals.

“GFP” means Government Furnished Property.

“GPC” means Government-wide Purchase Card.

“GSA” means the General Services Administration.

“GTM” means Government Technical Monitor.

“GTR” means Government Technical Representative.

“GWAC” means Government-wide Acquisition Contracts.

“HCA” means the Head of the Contracting Activity.

“HUDAR” means HUD Acquisition Regulation.

“IAA” means Interagency Agreement. The term includes “interagency acquisitions,” which are defined at FAR 17.501 (see also Handbook 2417.5).

“IAP” means Individual Acquisition Plan.

“IAT” means Integrated Acquisition Team.

“IGCE” means Independent Government Cost Estimate.

“IPAC” means Intra-Governmental Payment and Collection.

“IPP” means Invoice Processing Platform.

“IT” means Information Technology as defined at FAR Subpart 2.1.

“IRS” means Individual Subcontracting Reports.

“J&A” means Justification and Approval.

“LIN” means Line Item Number.

“MBE” means Minority Business Enterprise.

“NAICS” means North American Industry Classification System.

“NSN” means National Stock Number.

“OAMS” means the Office of Administrative and Management Services within HUD’s Office of Administration.

“OCFO” means the Office of the Chief Financial Officer.

“OCHCO” means the Office of the Chief Human Capital Officer.

“OCI” means Organizational Conflict of Interest.

“OCIO” means the Office of the Chief Information Officer.

“OCPO” means the Office of the Chief Procurement Officer.

“OFMS” means the Office of Facilities Management Services within the Office of Administration.

“OFPP” means Office of Federal Procurement Policy.

“OGC” means the Office of General Counsel. Except as otherwise specifically indicated, OGC refers to both the Headquarters OGC and its field-based components.

“OIT” means the Office of Information Technology, within OCIO.

“OMB” means Office of Management and Budget.

“ORC” means Office of Regional Counsel.

“OSDBU” means the Office of Small and Disadvantaged Business Utilization.

“PALT” means Procurement Acquisition Lead Time.

“PBC” means Performance-Based Contract.

“PBSC” means Performance-Based Service Acquisition.

“PM” means Program Manager.

“PNM” means Price Negotiation Memorandum.

“PNO” means Pre-Negotiation Objectives.

“POH” means Primary Organization Head.

“PPM” means Project and Program Management.

“PPMO” means Personal Property Management Officer.

“PSC” means Product/Service Code.

“PPIRS” means Past Performance Information Retrieval System.

“PWS” means Performance Work Statement.

“QASP” means Quality Assurance Surveillance Plan.

“RFI” means Request for Information.

“RFQ” means Request for Quotation.

“RO” means Reviewing Official.

“SAM” means System for Award Management.

“SAT” means Simplified Acquisition Threshold.

“SBA PCR” means Small Business Administration Procurement Center Representative.

“SBS” means Small Business Specialist.

“SF” means Standard Forms.

“SIN” means Special Item Number.

“SOO” means Statement of Objectives.

“SOW” means Statement of Work.

“SPE” means Senior Procurement Executive.

“SPP” means Strategic Procurement Plan.

“SPS” means Secure Payment System.

“SSA” means Source Selection Authority.

“SSDM” means Source Selection Decision Memorandum.

“SSP” means Source Selection Plan.

“SSR” means Summary Subcontracting Reports.

“T&M” means Time and Material Contract.

“TEP” means Technical Evaluation Panel.

“TIN” means Taxpayer Identification Number.

“TINA” means Truth in Negotiations Act.

“UCA” means Undefined Contract Action.

“U.C.C.” means Uniform Commercial Code.

“UCF” means Uniform Contract Format.

“U.S.C.” means United States Code.

“WBS” means Work Breakdown Structure.

Chapter 2403 – Improper Business Practices and Personal Conflicts of Interest

2403.000 – Scope of chapter.

This chapter prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for addressing any apparent or actual occurrences of these situations. (see FAR Part 3 and HUDAR Part 2403 for related information).

Subchapter 2403.1 – Safeguards

2403.101 – Standards of conduct.

2403.101-3 – Agency regulations.

(a) *Standards of conduct.* All HUD employees, including contracting, technical, and program personnel who have or will have access to source selection and/or contractor proposal information, must comply with the government-wide standards of ethical conduct rules published at 5 CFR Part 2635 and the HUD supplemental rules published at 5 CFR Part 7501. These rules help assure high standards of honesty, integrity, impartiality, and conduct on the part of all HUD employees.

(b) *Financial disclosure.*

(1) Because of their ability to influence actions that can have an economic impact on non-Federal enterprises, certain individuals with involvement in the acquisition process (*e.g.*, contracting personnel, COR, SSA, and individuals serving on TEPs) are required to disclose their financial interests.

(2) Disclosure is made on one of the following forms:

(i) SF-278, “Public Financial Disclosure Report,” filed by Presidential Appointees confirmed by the Senate, Senior Executive Service (SES), and Schedule C employees; or

(ii) OGE Form 450, “Confidential Financial Disclosure Report”.

2403.101-70 – Non-Disclosure requirements – source selection and contractor proposal information.

(a) *Covered personnel.* The requirements of this section apply to the following:

(1) Integrated Acquisition Team (IAT) members (see Handbook 2407.102-72);

(2) Technical Evaluation Panel (TEP) or other evaluation panel members;

(3) Source Selection Authority (SSA) other than the CO (see Handbook 2415.303-70(a)(1)); and

(4) Any other HUD personnel, and contractors, who are given access to source selection and/or contractor proposal information.

(b) *Briefing of covered personnel.* The CO (CO) will ensure that the personnel described in paragraph (a) are informed of the requirements in this section and Handbook 2403.101-3. The CO will instruct all such personnel to inform the TEP chairperson, CO, SSA, if applicable, and/or the responsible Agency Ethics Officer (AEO) immediately whenever they become aware of an actual or apparent conflict of interest involving their source selection activities (*e.g.*, a TEP member's spouse is an officer of a firm competing for the contract or the SSA owns stock in a company competing for an award).

(c) *Certifications and disclosures.*

(1) *Certification and disclosure requirements.* All individuals who will have access to source selection information and/or proposals (IAT members with access to such information; TEP or other evaluation panel members) must complete the following disclosures and certifications as applicable:

(i) Individuals who are required to make annual financial disclosure will not be required to submit a new financial disclosure form if a current report is on file with the appropriate AEO (see Handbook 2403.104-1 for definition). However, annual filers must provide an update to their report if there have been any changes in their financial interests and/or liabilities as reported on their most recent financial disclosure report. Individuals who are required to file an SF-278 will not be required to complete an OGE-450.

(ii) The Technical Evaluation Briefing Slide Deck can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(2) *Filing procedures.* If the AEO cannot access the financial disclosure forms on-line, individuals may deliver the required certifications and disclosures described in the above paragraph (c)(1) directly to the appropriate AEO. Alternatively, they may submit these documents to the CO for delivery to the AEO. In either case, they will place the documents in a sealed opaque envelope and identify the RFP number and title on the outside of the envelope. Individuals are required to provide these documents within 10 business days after notification of their participation in the procurement.

(3) *Financial conflict of interest screening.*

(i) *Supporting documentation.* For each solicitation, the CO will provide the AEO with a copy of the abstract of proposals that lists the names and addresses of all organizations that have submitted a proposal and a list of the names of the TEP or

other panel members and the SSA. This documentation will be provided to the AEO within 10 days after the date the proposals are due.

(ii) *AEO review.*

(A) The AEO will determine if each evaluation panel member and the SSA have an appropriate financial disclosure form on file and if any apparent financial conflict of interest exists. The AEO will inform the CO if any panel member or the SSA does not have a current report on file. The CO will ensure that any such individual submits the applicable report.

(B) The AEO will review the certifications and financial disclosure forms and promptly notify the CO of any apparent or actual financial conflict of interest on the part of any TEP member(s). The AEO will advise the CO of any rulings on the affected member's continued participation in the TEP and recommend other necessary action. The AEO will notify the contracting office by email or other written means confirming the status of each of the TEP members once review is completed. This review should be completed as soon as possible after the CO provides AEO with the information required from the TEP members and the abstract of proposals. The TEP may not be convened without written clearance of its members from the AEO.

(4) *Dismissal and withdrawal of TEP members.*

(i) A TEP member may withdraw from participation in a TEP at any time (*e.g.*, for reasons of health, extended leave, etc.). The TEP member must notify the CO and TEP chairperson and provide the reason for the need to withdraw.

(ii) A TEP member must notify the CO, the TEP chairperson, and the responsible AEO immediately of any known or suspected conflict of interest that the TEP member has with a competing offeror. Upon confirmation of the conflict of interest, the TEP member will withdraw immediately from the source selection and document this withdrawal, in writing, to the CO and AEO. In cases of apparent conflict of interest, the CO and SSA (if other than the CO) will consult the AEO for advice. The SSA may replace the TEP member at the SSA's discretion.

(iii) The CO will notify the TEP chairperson immediately, in writing, when a member must be dismissed from the TEP for any reason that affects the integrity or the operational efforts of the procurement. Upon such notice, the chairperson must immediately dismiss the individual and return to the CO all proposals and other source selection information that was provided to the individual.

(iv) The chairperson or CO will advise a withdrawn or dismissed TEP member of responsibilities concerning continuing prohibitions under procurement integrity and the nondisclosure requirements in Handbook 2403.104-4.

(5) *Withdrawal of SSA.* The SSA will notify the CO and the responsible AEO immediately of any known or suspected conflict of interest the SSA has with a competing offeror or any other reason that the SSA must withdraw or be dismissed. Upon confirmation of the conflict of interest or other issue, the SSA will immediately withdraw from the source selection and designate an alternate SSA. In cases of apparent conflict of interest, the CO and SSA will consult the AEO for advice.

(6) *File documentation.* The CO will document the contract file regarding the dismissal of any TEP member and/or withdrawal of the SSA, noting the name, date of dismissal/withdrawal, the facts contributing to the dismissal/withdrawal, and include all supporting documentation received from the AEO.

(d) *Outside personnel* (see also Handbook 2415.303-70(a)(7)).

(1) If individuals from outside HUD (*e.g.*, from another Government agency or from outside the Government) are to be used as TEP members, advisors, or consultants, they will be informed of, and subject to, the requirements of this section as though they were HUD employees.

(2) The CO will not release proposals to an outside evaluator until the CPO has approved the use of the evaluator and the evaluator has completed and submitted the required disclosures and certifications.

(e) *Confidentiality.* To protect the confidentiality of the disclosure process, the CO will request that all financial disclosure reports be submitted and ensure that they are transmitted to the AEO in sealed, opaque envelopes.

(f) *Refusal to certify.* Refusal on the part of any individual to complete and submit the certifications and financial disclosures required in paragraph (b) of this subchapter and/or failure to timely submit them, will disqualify him/her from participation in the TEP.

(g) *Later disclosures of conflicts of interest.* TEP members – including the chairperson, advisors, consultants, and outside personnel – will immediately notify the chairperson and/or CO whenever they become aware of a potential or actual conflict of interest on their part. The duty to notify the TEP chairperson of conflicts of interest that may arise is continuous throughout the duration of the entire procurement. The CO and chairperson will inform AEO of any disclosures under this paragraph. The AEO will advise the CO and chairperson, immediately, as to whether or not there is a conflict and the appropriate action required. When a member is determined to have a conflict of interest, the chairperson will take appropriate action, which may include the member's dismissal from the TEP. The SSA or TEP chairperson, if authorized by the SSA, will appoint a successor to replace a dismissed individual, if one is needed.

2403.104 – Procurement integrity.

2403.104-1 – Definitions.

“*Agency ethics official (AEO)*” means legal counsel in the Ethics Law Division (ELD) in Headquarters OGC or in the Office of the Regional Counsel in the field designated to serve as an AEO in accordance with 5 CFR Part 2638.201.

“*Participating personally and substantially in a Federal procurement*” has the meaning set forth in FAR 3.104-1. In addition, within HUD, the following individuals normally will be deemed to have participated personally and substantially in a HUD procurement to which they have been assigned or in which they have participated:

- (a) Contracting Officer;
- (b) Contract specialist;
- (c) Office of Chief Procurement Officer (OCPO) supervisory and managerial personnel who review the CO’s or contract specialist’s work on a procurement;
- (d) COR;
- (e) Technical Evaluation Panel members, advisors, and external consultants;
- (f) Source Selection Authority; and
- (g) HUD or other Government employees, consultants, and contractors who develop or assist in developing contract specifications, work statements, evaluation plans, solicitation provisions, or special solicitation provisions or contract clauses.

2403.104-3 – Statutory and related prohibitions, restrictions and requirements.

2403.104-370 – Controlled Unclassified Information (CUI).

Controlled Unclassified Information (CUI). HUD may provide prospective offerors or contractors access to CUI for the sole purpose of preparing offers in response to HUD solicitations or performing contract work, respectively.

CUI is defined as:

- (a) Any information which the loss, misuse, modification of, or unauthorized access to, 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 to be kept secret in the interest of national defense or foreign policy under criteria established by an Executive Order or an Act of Congress;
- (b) Is not available to the general public;
- (c) May include:

- (1) Government acquisition-sensitive information, including source selection information and contractor bid or proposal information as defined at FAR section 2.101;
- (2) Information contained in individual contracts that is not public and may include information contained in Government databases, proprietary economic, financial, or business information belonging to HUD or provided to the Government by other parties (*e.g.*, other contractors);
- (3) Personally identifiable information (PII) that includes, but is not limited to, social security numbers, names, dates of birth, places of birth, parents' names, credit card numbers, applications for entitlements, and information relating to a person's private financial income, employment, and tax records;
- (4) Other information that the HUD CO or other authorized HUD employee explicitly identifies as CUI; and
- (5) May exist in various physical media (*e.g.*, paper, electronic file, audio or video disc) or be transmitted orally, developed under or pre-exist any related contract, and may be in its original form or a derivative form (*i.e.*, where the information has been included in contractor-generated work, or where it is discernible).

2403.104-371 – Nondisclosure of Controlled Unclassified Information.

(a) *Pre-award policy.*

- (1) Nondisclosure agreements associated with CUI must be processed in accordance with paragraph (3) below.
- (2) COs will ensure that the requirement to execute nondisclosure agreements between the contractor employee and subcontractors are included in the contract requirements. Failure to execute such agreements will therefore be a breach of contract.
- (3) COs will obtain executed nondisclosure agreement template entitled Nondisclosure Agreement between the Department of Housing and Urban Development ("HUD") and Potential Offeror Granting Conditional Access to Controlled Unclassified Information ("Nondisclosure Agreement") from notables identified in (i) and (ii) below and execute a nondisclosure template entitled Nondisclosure Agreement between the Department of Housing and Urban Development ("HUD") and External Party Granting Conditional Access to Controlled Unclassified Information ("Nondisclosure Agreement") for notables identified in (iii) below:
 - (i) Each employee of a prospective offeror and any other person who will be provided access to CUI for the sole purpose of preparing an offer to be submitted by the prospective offeror in response to a HUD solicitation.
 - (ii) An officer or other representative of a prospective offeror provided CUI authorized to bind the firm; and

(iii) Each contractor employee and subcontractor employee who will need, or is expected to have, access to CUI to perform duties under a HUD contract.

(4) COs will insert the HUDAR provision 2452.237-82, *Access to Controlled Unclassified Information (CUI)*, in all solicitations when CUI will be provided to potential offerors for the purpose of preparing offers. COs will insert the HUDAR clause, 2452.237-83, *Access to Controlled Unclassified Information*, in Section H of all contracts when contractor or subcontractor employees will be granted access to CUI.

(5) No contractor or subcontractor employee, prospective offeror, offeror employee, or other party assisting an offeror with the preparation of an offer will be provided access to CUI until the CO has been provided an executed nondisclosure agreement.

(6) Contract specialists and COs will assist their program customers in identifying the need to obtain nondisclosure agreements (*e.g.*, by inquiring during the IAT if any sensitive information will need to be provided to prospective offerors).

(7) COs will place and maintain all pre-award executed nondisclosure agreements in the official contract file maintained within the acquisition management system.

(b) *Post-award policy.*

(1) COs will obtain and preserve signed copies of nondisclosure forms from every relevant contractor or subcontractor employee during the performance of the contract.

(2) The CO and program personnel will ensure that all contractor employees have executed nondisclosure forms prior to being provided access to CUI.

(3) All executed nondisclosure agreements will be maintained within the acquisition management system.

(c) *Contract close-out policy.*

CO's will obtain written certification from the contractor that all physical or electronic media containing CUI provided to the contractor before or during contract performance or created (including personal documentation, *e.g.*, notes) during contract performance has been transferred to or maintained on a HUD system, or properly destroyed of. For specific disposition instructions, the CO should consult the HUD Information Technology Security Policy Handbook, the Office of the Chief Information Officer, the records management liaison for the cognizant program officer or the Executive Secretary for Information Management.

2403.104-372 - Applicability to Technical Evaluation Panel (TEP) deliberations.

(a) No source selection information as defined at FAR 2.101, provided to evaluators for new awards or competitive orders may be disclosed to any individual outside the TEP, without a need

to know and unless the CO has given prior written permission to do so. Persons with a need to know generally include the TEP or other group assembled to assist the CO in assessing offers, the COR, and contracting and legal personnel directly involved in the award of the contract action. Supervisors and managers of such HUD personnel are not automatically deemed to have a need to know.

(b) The CO will ensure that all individuals, other than contracting personnel and legal advisors, to whom source selection information is provided, execute the “*Source Selection Participation Agreement*” prior to being given access to such information. The CO will place all certifications in the official contract file maintained within the acquisition management system.

2403.104-373– Exceptions.

The Chief Procurement Officer, or designee, must approve exceptions to this policy. Requests for exceptions must be written and include a detailed justification.

2403.104-4 – Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) No information provided or made available to individuals involved in the award of competitive contracts or competitive orders may be disclosed outside HUD or to any HUD employee without a need to know, unless authorized, in writing, by the CO. This prohibition remains in effect after an individual’s participation in, or involvement with, an award has ended. HUD personnel are not prohibited from providing their supervisors or higher-level management with information of an administrative nature (*e.g.*, the time and place of panel meetings, the amount of the individual’s time to be required on the panel, and status reports on evaluation completion progress).

(b) All proposals, source selection information, and proprietary information must be kept physically secure in HUD workstations both during and after duty hours. Documents containing such material, sent through interoffice mail, must be opaquely wrapped and sealed. Proposals, source selection information, and proprietary information that is transmitted electronically (*e.g.*, via electronic mail to remote TEP members) will be identified as confidential and also be kept secure by the transmitter and by the recipient.

(c) In addition to the requirements in FAR 3.104-4(c), COs will ensure that source selection documents are labeled as follows:

(1) HUD documents.

(i) The following notice will be prominently displayed on the front page of all HUD-generated source selection documents including acquisition plans and evaluation plans:

This document contains source selection information related to the conduct of Federal Agency procurement. The disclosure and receipt of this information is restricted by the Office of Federal Procurement Policy Act

(41 U.S.C. § 2101-2107). Unauthorized disclosure or receipt of this information may result in civil or criminal penalties as provided by law.

(ii) Each page of HUD-generated source selection documents will be marked with the following legend:

*Source Selection Information – See FAR 3.104
For Official Use Only*

(2) *Offeror/contractor documents.* If a proposal is not labeled with the legend in paragraph (1)(ii), the CO will ensure that a cover sheet containing the legend is affixed to each portion (e.g., technical and cost sections) of the proposal.

2403.104-70 – Notifying technical evaluators of procurement integrity requirements.

(a) The CO is responsible for ensuring that all individuals serving as technical evaluators for competitive contracts and task/delivery orders are informed of the prohibitions set forth at FAR 3.104 regarding the disclosure of contractor bid or proposal information and source selection information before the award of a Federal agency procurement contract to which the information relates.

(b) COs may either brief technical evaluators concerning the prohibition set forth at FAR 3.104 or request that legal counsel provide briefings to the technical evaluators. To ensure that legal counsel is available, the CO must invite legal counsel to attend or provide briefings to evaluators at least 7 days prior to the date of such briefing to ensure legal counsel is available.

Chapter 2404 – Administrative Matters

2404.000 – Scope of chapter.

This chapter prescribes policies and procedures relating to the administrative aspects of contract execution, contractor-submitted documents, distribution, reporting, retention, and files (see FAR Part 4 and HUDAR Part 2404 for related information). Information contained in this chapter does not supplant other regulations, such as Freedom of Information Act (FOIA) regulations but should be utilized as part of a whole.

Subchapter 2404.6 - Contract Reporting

2404.604 – Responsibilities.

2404.604-70 – Contract specialist responsibilities.

Contract specialists are normally responsible for reporting contract actions in the acquisition management system and Federal Procurement Data System-Next Generation (FPDS-NG). In cases where a CO acts as the Contract Specialist (*e.g.*, prepares contract documents for execution by a higher-level CO), the CO may be responsible for entering data into the acquisition management system and FPDS-NG.

2404.606 – Reporting data.

2404.606-70 - Reporting requirements.

HUD fulfills the FPDS-NG reporting requirements by recording procurement actions in the acquisition management system. This system collects and validates data in accordance with FPDS-NG requirements.

(a) All actions as identified at FAR Section 4.606 will be reported by recording the action in the acquisition management system and validating the FPDS-NG screens.

(b) *Review.* To ensure accuracy of data reported to FPDS-NG, all contract action data reports submitted to FPDS-NG for contract actions exceeding the micro-purchase threshold must be reviewed at one level above the individual (*e.g.*, Contract Specialist or Contracting Officer) who input the FPDS-NG contract action report. (Note: “Contract action report” means the contract action data required to be entered into FPDS-NG.)

Subchapter 2404.8 – Government Contract Files

2404.802 – Contract files.

(a) Contract files are official Government records and must be maintained in such a manner that they are safeguarded and readily accessible by OCPO personnel. All files and documents referenced in this section refer to either hard (paper) copy documents or electronically transmitted documents unless specifically identified as either hard or electronic files.

(b) All contractual documents established after 1 October 2015 must be maintained in the integrated acquisition management system.

(c) *File contents.* All contract files, hard copy or electronic, will contain the documentation required by FAR 4.803 and as set forth in the standard contract file checklists prescribed by the Chief Procurement Officer.

(d) *Access by other than OCPO personnel.*

(1) Individuals outside of OCPO may have a legitimate need to access the information contained in OCPO contract files (*e.g.*, legal counsel responding to protests). Such individuals include, but are not limited to, representatives of other HUD offices (*e.g.*, Inspector General and General Counsel) and other federal agencies (*e.g.*, Government Accountability Office, Court of Federal Claims, or Department of Justice). The CO or Contract Specialist should caveat the release of information obtained from a contract file to anyone, including OGC that release to the public may require redactions and any such request must be submitted to the CO for processing prior to release. Dissemination of anything other than a copy of just the contract to other HUD employees and to the public MUST be strictly scrutinized pursuant to FAR 3.104-4 (Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information), FAR Part 24 (Freedom of Information) and FAR Part 27 (Patents, Data and Copyrights).

(2) Historical hardcopy original contract files or file contents will not be removed from OCPO office space or the Office of General Counsel. All requested contract files, or file contents may be authorized as follows:

(i) The OCPO Division Director or Branch Chief responsible for the contract file may authorize HUD employees outside of OCPO to temporarily remove *duplicate* copies of contract files or file contents to another location within a HUD facility (*e.g.*, OGC attorney's office).

(ii) The responsible ACPO must authorize the release of OCPO contract files to individuals from other federal agencies. If authorization to release contract files is obtained from the ACPO, the CO will ensure that the files are duplicated prior to the release and only duplicated copies are provided to the requesting agency.

(iii) The CPO or Deputy CPO must authorize the release of *duplicate* contract files or file contents to any party outside the federal government. (Note: In the conduct of certain legal and administrative proceedings, *e.g.*, bid or award protest, an adjudicating body such as the GAO or Court of Federal Claims may provide documentation submitted to them by HUD to parties outside the federal government.)

(iv) The CO or contract specialist assigned to the contract will maintain an inventory of all duplicate hardcopy files which indicates the physical location of the file (*e.g.*, OGC attorney's office) and the contact information for the individual

with custody of the file. Upon return of the file, the CO or specialist will verify that all file documentation that was released has been returned by comparing the original file and the returned (duplicate) file. If any documents are missing, the CO or contract specialist will obtain the missing documents from the party to whom the duplicate file was provided.

(3) Electronic files may be accessed electronically by individuals outside of OCPO through the integrated acquisition management system, the Sharepoint site, or provided as attachments to an encrypted e-mail.

(i) Files located within the integrated acquisition management system may be accessed electronically by individuals outside of OCPO only if they have been provided access to the system (e.g. legal counsel reviewing a solicitation). Only the CPO has the authority to grant access to the acquisition management system.

(ii) If the file is located within the integrated acquisition management system and the individual does not have access to the system, the file may be provided through Sharepoint or as an attachment to an encrypted e-mail.

(iii) If the file does not reside within the integrated acquisition management system, the file may be posted on the Sharepoint site or provided electronically through an encrypted e-mail.

(e) Only those individuals specifically appointed as OCPO representatives (e.g., Audit Liaison Officer) may respond to requests for information concerning contracting files or activities from an outside agency (e.g., Inspector General, Government Accounting Office).

(f) *Compliance monitoring.* The ACPOs, Division Directors, and Branch Chiefs (Field Operations) within OCPO's operations offices are responsible for file maintenance and will monitor and ensure staff compliance with the requirements of this handbook.

2404.802-70- Historical hardcopy contract file management by OCPO personnel.

(a) *File location.* All historical hard copy files for contracts that have not been closed out will be maintained in a manner and location that permits their access by OCPO personnel at all times. Accessible means that OCPO personnel can locate and obtain access to a file and all its required contents. The official location of hard copy contract files may vary from OCPO office to office (e.g., central file room or common file area). Nevertheless, each OCPO Manager must ensure that all OCPO personnel within an office are aware of the official hard copy file location of all contract files for which the office is responsible and that the files are properly maintained.

(b) *Contract filing order.* Historical hard copy contract folders will be filed in chronological order by year and sequential contract number within each year.

(c) *Historical hard copy file and document use.*

(1) Historical hard copy files may only be removed from their official locations when OCPO personnel have a legitimate need to physically access them (*e.g.*, to execute contract actions such as modifications or research information contained in files). Personnel should keep files for the minimum time necessary to complete the activity for which they are required. When the file is needed for an extended period (*e.g.*, weeks) to complete a long-term action (*e.g.*, processing a modification, settling a claim, negotiating an equitable adjustment, or conducting a termination), and it would be impractical to return the file to its official location on a daily basis, the user may keep the file at the user's workstation until the action is completed. However, the file still must remain in an area that is accessible to other OCPO personnel (*e.g.*, not locked in a workstation drawer).

(2) To avoid loss of file documents, individual documents and portions of documents contained in contract files will not be removed from files. When personnel need to access specific documents in a contract file (*e.g.*, to respond to telephone inquiries or make photocopies), they will remove the entire file folder.

(d) *Historical hard copy file charge-out card.* Whenever it is necessary to remove a physical file, or any portion of a file (*e.g.*, folder 2 of 3) from its normal official location, except for very brief use (*e.g.*, copying a document in the file or verifying a piece of information), the individual removing the file, or portion of it, will complete a charge-out card and place it where the file was located. The file borrower must write the contract number, the borrower's name, and the date the file is removed. If only a portion of the complete file is removed (*e.g.*, one file folder), the individual must describe exactly what has been removed. When the file is returned, the user will remove the card from the shelf. This will enable other OCPO personnel to locate files that have been removed from their official location.

2404.802-71 – Maintenance and disposition of source selection documentation.

(a) The program office will provide to the CO all original documentation relevant to the source selection process including but not limited to:

- (1) Evaluation sheets;
- (2) Evaluation reports;
- (3) Back-up data;
- (4) Advisory or committee reports;
- (5) Minutes of evaluation panel meetings;
- (6) Reference check documentation; and
- (7) Source selection decision document.

(b) The CO will ensure that the source selection-related documents, whether hard copy or electronic, are placed and maintained in the official contract file.

(c) The CO may provide the COR with copies of the successful proposal and any modifications made to it during the award process when they will be needed in monitoring the contractor's performance.

(d) Other documents related to the selection process will be disposed of as follows:

(1) Copies of unsuccessful proposals and extra copies of the successful proposal will be returned to the contracting office and, if requested, returned to the offerors who submitted them; and

(2) Unofficial internal documents (*e.g.*, TEP members' individual notes) are not considered to be official records and will not be placed in the official contract file. The program office may keep such documents for a brief period after contract award for informational purposes. The program office will consult the CO whenever there is doubt as to whether a document needs to be retained in the official contract file.

2404.802-72 – COR contract files.

(a) *General requirements.* As required by FAR 1.604, CORs will maintain a file for each contract assigned to them. *COR contract files are not maintained in the integrated acquisition management system.* The purpose of this file is to provide a history of the COR's actions taken in accordance with the responsibilities and duties described in the delegation of authority memorandum. The COR's file ensures continuity of monitoring (*e.g.*, smooth transition to a new COR) and ease of retrieval of information. The file will be logically arranged to permit ready access to its contents. File documents maintained electronically must be transitioned to any follow-on COR.

(b) *File contents.* The file documentation will include but not be limited to:

(1) Copies of the original contract and all modifications to it;

(2) Each original COR delegation memorandum (see Handbook 2401.602-2(d)(4)). If any successor COR is appointed, all the preceding CORs' delegations will be retained in the file;

(3) Complete requisition for each action requiring formal requests (*e.g.*, modifications);

(4) The winning contract proposal including any revisions;

(5) The contractor's approved work plan, quality control plan, etc., as applicable;

(6) All deliverables, including technical progress reports, submitted by the contractor and a list of all parties to whom deliverables have been distributed. For deliverables that cannot be placed in the file, the file will document the location or disposition of the deliverables;

- (7) Correspondence with the contractor or other parties having a substantive bearing upon the performance or administration of the contract, including written correspondence (hardcopy and email), notes or summaries of substantive oral communications (*e.g.*, telephone calls), and other correspondence relevant to the contract (*e.g.*, internal Departmental memoranda and emails);
 - (8) Documentation of the inspection and acceptance of deliverables and recommendations on their acceptance;
 - (9) Reports related to the performance of the contract including but not limited to:
 - (i) Reports of visits to, and inspections of, contractor or subcontractor work sites by the COR or other program personnel; and
 - (ii) Periodic COR reports on contract status made to program office management, as applicable. (Note: All contractor performance evaluations must be made via CPARS, see Handbook 2442.15).
 - (10) All invoices and vouchers received, receiving reports, and for all contracts, a payment register showing the amount of obligated funds, funds disbursed to the contractor, and the balance of funds remaining; and
 - (11) Documentation supporting all recommendations to the CO for contractual actions (*e.g.*, disallowance of costs, issuance of cure notices, exercise of options, or consent to subcontract).
- (c) *Subordinate COR files.* If any subordinate COR is assigned to the contract, they will maintain files containing any of the items in paragraph (b) applicable to their assigned duties.
- (d) *Retention of files.* Program offices are responsible for developing procedures for the retention and retirement of technical files and products. The COR files will be disposed of in accordance with *Records Disposition Schedule 3* in Handbook 2225.6.
- (e) *Contract closeout.* Upon notification from the CO that the contract or order is to be administratively closed (see Handbook 2404.804-570), the primary, subordinate and alternate CORs will provide to the CO all file documentation requested.

2404.804 – Closeout of contract files.

- (a) The successful closeout of a contract or order requires that all outstanding issues of contract performance, administration, and payment be addressed and resolved. Therefore, virtually any matter of contract administration **can** become an issue in the closeout process. This policy is limited to those basic steps that are most commonly used to close contracts and orders. There are many individual circumstances that may affect what steps are appropriate for any given case. However, what is adequate or possible in an instance is a matter of judgement by the CO.

(b) Completed contract means:

- (1) The contract is physically completed (see FAR 4.804-4) or,
- (2) The contract has otherwise ended (*e.g.*, terminated), and
- (3) No legal or financial action is pending (see FAR 4.804-1).

2404.804-170 – Closeout time frames.

(a) The standard closeout time periods for physically completed contract actions will be as follows:

- (1) *Contracts*. Contracts will be closed within the periods set forth in FAR 4.804-1(a).
- (2) *Task and delivery orders*. The FAR does not specify time frames for closing individual task or delivery orders. Orders will be closed within six months after their completion whenever possible.
- (3) *IAAs*. The FAR does not specify time frames for closing IAAs. IAAs will be closed within six months of their expiration.
- (4) *Simplified acquisitions*. Simplified acquisitions are considered complete upon evidence of receipt of the property or services purchased, acceptance by the COR or Program Office and final payment to the contractor (see FAR 4.804-1(a)(1)).

(b) These standards apply unless there are circumstances involving litigation or appeal, outstanding audit or financial issues, or in the case of termination, actions that are required under FAR Part 49 are incomplete. In such cases, the issue(s) must be resolved prior to closeout, regardless of the applicable time standard.

2404.804-5 – Procedures for closing contract files.

COs will follow the guidance at FAR 4.804-5 in addition to this subsection.

2404.804-570 – Initiation of closeout.

The CO will initiate the closeout process. The CO is responsible for contacting all affected parties (*e.g.*, COR and payment office) and obtaining all required documents to ensure that the contract is physically complete as defined at FAR 4.804-4.

2404.804-571 – Simplified acquisition closeout.

(a) The CO or other designated individual (*e.g.*, contract specialist) will:

- (1) Confirm that the program office received and accepted the supplies or services. Evidence may be a receiving report or other written statement that includes the order

number (if a paper purchase order was issued), product or service identification, price, and a statement that the supplies or services were accepted.

(2) Confirm that payment was made to the vendor. If it is not possible to confirm by review of hardcopy receiving reports or other written documentation, this information can be obtained from the Department of Treasury, Bureau of Fiscal Services, Invoice Processing Platform. Verify that the payment amount matches the award amount shown in the acquisition management system. Obtain explanation and justification from the COR or program office if the total payment amount is less than the total award amount, and annotate the closeout.

(3) Verify that the information contained in the acquisition management system for the action is accurate and that the action's status is changed to "closed."

(4) Prepare the closeout checklist and certification statement. The mandatory *Closeout Checklist and Certification Statement* is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(5) Closeout modifications are required on all actions utilizing simplified acquisition procedures and those utilizing Simplified Procedures for Certain Commercial Items over the Simplified Acquisition Threshold (SAT) except in certain circumstances.

(b) Exception to closeout modification issuance. For SPS closeouts only: Purchase orders with all invoices paid, no remaining funds (fully expensed), and all products or services received and accepted; no modification is required but the checklist and certification must be completed and the SPS order manually closed.

2404.804-572 – Interagency Agreement (IAA) closeout.

(a) The CO or other designated individual (*e.g.*, contract specialist) will:

(1) For IAAs that transfer HUD funds to other agencies, confirm with the COR, program office, or other recipient that all required funds were transferred to the recipient agency. The mandatory template for *IAA Closeout Checklist and Certification* is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(2) If there were funds to be obligated or deobligated, complete a closeout modification in the acquisition management system.

(3) Verify that the information contained in the acquisition management system for the IAA is accurate and the status is changed to "closed".

(4) Prepare the closeout letter.

(5) Prepare or add the closed document to an existing “list of Closed Records”.

2404.804-573 – Contract and task/delivery order closeout.

(a) The CO will:

(1) Identify contracts ready for closeout. Contract specialists and COs must monitor their assigned contracts to anticipate contract completion. Status may be monitored by generating system reports to identify expired actions. Contracting personnel will not rely upon CORs and Program Offices to inform them when contracts have ended and are complete.

(2) Confirm that the contract is physically complete.

(i) Confirm with the COR that the contractor has completed all work and that all deliverables have been received and accepted or other disposition made (*e.g.*, consideration for late or deficient deliverables or services).

(ii) Confirm that there are no legal, financial, or other matters or actions pending resolution. If any such matters are pending resolution, do not proceed to close the contract until they are resolved. The CO will confirm that:

(A) All outstanding claims have been resolved.

(B) All modifications, including change orders and resulting equitable adjustments, have been finalized or canceled as appropriate.

(C) All interim or disallowed costs have been settled.

(3) Confirm that the official contract file contains all required documents. The CO will:

(i) Examine the contract file contents against the file content checklist to determine if the file is complete (see FAR 4.803).

(ii) Obtain missing documents from the appropriate sources (*e.g.* COR, payment office, or contractor).

(4) Confirm that the COR has completed the final contractor performance evaluation in the Contractor Performance Assessment Reporting System (CPARS), and that any contractor rebuttal of the COR’s rating has been resolved. The CO will ensure that the final performance evaluation documents any failure by the contractor to fulfill any contract requirements (*e.g.*, obtain consent to subcontracts) and not just the contractor’s technical performance. CPARS is accessible at:

<http://www.cpars.gov>

(5) Obtain confirmation, in writing, that the COR has notified the Personal Security Division of any contractor personnel who had access to HUD facilities and no longer require such access; retrieved all Personal Identity Verification (PIV) badges and returned them to PSD; and notified the IT Security staff of any contractor personnel who had access to HUD systems, but no longer require such access.

(6) Ensure that the contract record in the acquisition management system and FPDS-NG, is accurate with regard to all actions that have been taken. Reconcile any errors.

(7) If the contract was terminated in whole or in part, ensure that all actions related to the termination have been completed.

(8) *Settle indirect costs (cost-reimbursement (materials portion only)) contracts and orders*). If the contractor's final indirect cost rates have not been established through an audit, use the Quick Closeout Procedure, if appropriate (see Handbook 2404.804-574) and negotiate final indirect costs. Otherwise, obtain an external audit for any contract under which there are \$1 million or more in unresolved indirect costs, or perform a desk review and resolve any resulting findings.

(9) Identify and obtain the closeout documentation to be provided by the contractor using a Closeout letter tailored to the specific contract. The mandatory template for the *Closeout Letter* is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

If the contractor does not respond within the specified time or fails to provide all requested information, then contact the contractor to follow up. Obtain the following from the contractor *as applicable* to the specific contract:

(i) *Final Invoice (fixed-price contracts) or Final Voucher (cost-reimbursement contracts)*, if the contractor has not already submitted it.

(ii) *Contractor's Release of Claims*. The mandatory template for the *Contractor Release of Claims* is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

This is a final release discharging the Government, its officers, agents and employees from all liabilities, obligations and claims under the contract. (Note: For indefinite-delivery contracts, the Release covering the entire contract is only requested after all orders placed under the contract have been completed.)

(iii) *Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (cost-reimbursement contracts)*. Ensure that the assignment is properly executed, *i.e.*, the Government will receive any subsequent refunds or credits on work that it directly or indirectly paid for during the contract performance.

(iv) *Inventory of Government Property* (if the contract provided for Government furnished or contractor acquired property; see FAR Part 45 and the Government Property clause of contract). All Government furnished (all contract types) and contractor-acquired (cost-reimbursement contracts) property must be accounted for and properly disposed of before a contract can be closed (see also Handbook 2404.804-573(a) (13) herein).

(v) *Completed HUD-770, Report of Inventions and Subcontracts* (see HUDAR 2427.305-2). This is required for any type of contract under which the contract work required the development of inventions. If it is uncertain as to whether the contractor developed any inventions that were patented, send the form to the contractor. If the contractor responds affirmatively to the patents query, seek assistance from legal counsel.

(vi) A statement of royalties paid or required to be paid in connection with performing the contract and any subcontracts together with the reasons (**only** if the contract price included payment of royalties and the contract included FAR clause 52.227-9, Refund of Royalties). If the contractor responds affirmatively to the royalty query, seek assistance from legal counsel.

(10) Ensure that all subcontract matters are settled and confirm that the prime contractor has settled all subcontracts.

(11) Confirm that all subcontracts requiring the CO's consent have been consented to (see FAR 44.2 and clause 52.244-2, Subcontracts). If any subcontract requiring consent was not provided for consent, obtain the contractor's explanation and relevant information. The CO will use best judgement to determine if retroactive consent is appropriate. If the CO determines that consent is appropriate, the CO will ratify the consent. If the CO determines that ratification is inappropriate, the CO will document the contract file with his or her rationale. If consent is waived because the contractor has an approved purchasing system, a copy of the system approval must be in the contract file. All cases where the contractor failed to obtain required consent will be documented in both the contract file and in the final contractor performance evaluation.

(12) Ensure that all required subcontract reports have been submitted. If the contract required the submission of a subcontracting plan and associated reports (*i.e.*, included the FAR clause 52.219-9, Small Business Subcontracting Plan), the CO must verify that the contractor submitted the final report (SF-294 for individual contracts) as specified in FAR clause 52.219-9, Small Business Subcontracting Plan. Final reports must be verified via the Electronic Subcontracting Reporting Systems (eSRS). The CO is responsible for reviewing and documenting the contractor's performance under subcontracting plans in

accordance with FAR 19.706(g). This effort must be coordinated with the Office of Small and Disadvantaged Business Utilization (OSDBU).

(13) Ensure that Government-furnished property is properly disposed of. After obtaining the contractor's final property inventory report, place the original in the contract file, and provide a copy to the Space Management Program Director in the Office of Administrative and Management Services. The inventory forms to be used, the methods of disposal, and other rules for dealing with property vary by contract type, the type of property involved, and the particular property clause included in the contract. (Note: Under fixed price type contracts, the contractor retains title to all property acquired by the contractor for use on the contract, except for property identified as a deliverable end item, unless otherwise stated in the contract. Under cost-reimbursement and time and material contracts, and cost-reimbursable line items under fixed price contracts, the Government acquires title to all property to which the contractor is entitled to reimbursement, in accordance with paragraph (e)(3) of FAR clause 52.245-1, Government Property; see FAR Part 45 for guidance.)

(14) Dispose of any classified documents that were provided by the contractor or generated in the performance of the contract. In general, this will be quite rare.

(15) Ensure that any liquidated damages owed the Government are received (see FAR 11.5 and clause 52.211-11, Liquidated Damages – Supplies, Services or Research and Development).

(16) Ensure that any value engineering change proposals (VECP) received from the contractor have been appropriately processed and if HUD accepted any VECP, the contractor received the appropriate share of the net acquisition savings in accordance with FAR Part 48 and clause 52.248-1, Value Engineering.

(17) Ensure that any warranty matter is resolved (*e.g.*, contract was modified to reflect price reduction for acceptance of non-conforming service; see FAR 46.7).

(18) If contractor owes money to the government, obtain repayment.

(19) Ensure that the final invoice or voucher has been received and payment has been made.

(i) For cost-reimbursement contracts, the contracting office must approve the final payment voucher before it can be paid. Any amount owed to the contractor and not previously paid must be promptly processed. For conditions allowing payment of the final increments of fixed fee withheld under cost-plus-fixed fee contracts refer to FAR clause 52.216-8, Fixed Fee. For the treatment of withholding funds pending closeout of Cost No Fee and Cost-Sharing contracts refer to FAR clauses 52.216-11, Cost Contract – No Fee and 52.216-12, Cost Sharing Contract – No Fee, respectively.

(ii) The mandatory template for the *Assignment of Refunds, Rebates, Credits and Other Amounts* is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(20) Execute a closeout modification to the contract. The modification will:

(i) Deobligate any excess funds that were obligated during the life of the contract that have not already been deobligated;

(ii) Obtain a requisition from the Program Office through the acquisition management system to obligate any increase in funding needed to pay for negotiated increases in the contract price or costs (*e.g.*, for final adjustment to indirect cost rates);

(iii) Incorporate by reference the contract completion statement, the Contractor's Release of Claims, and the Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (cost-reimbursement contracts only); and

(iv) Identify all other issues that were resolved and have a bearing upon the contract's terms (*e.g.*, consent to subcontracts, changes in contract period, disposition of Government equipment to the contractor, and final contract cost/price).

(21) Distribute modification obligating or deobligating funds to the payment office.

(22) Prepare the Contract Completion Statement. The mandatory template for the *Contract Completion Statement* is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(23) Closeout the award in the acquisition management system.

2404.804-574 - Closeout of indefinite-delivery contracts, orders, and agreements.

(a) *HUD-awarded indefinite-delivery contracts.*

(1) Where HUD is the awarding agency of the basic contract, the contract cannot be closed in the acquisition management system until all task or delivery orders have been closed. For each order, the CO will obtain all relevant documentation, prepare an individual order checklist and closeout completion statement, and place them in the contract file.

(2) The CO will ensure that appropriate closeout milestones for individual orders are entered in the acquisition management system. Orders should be closed out in accordance with Handbook 2404.804-170 after they expire whenever possible. When all orders have

been recorded as closed in the acquisition management system, the basic contract may be recorded in the acquisition management system as closed.

(3) In unusual cases (*e.g.*, very old contracts under which all orders have expired, or where a very large number of orders were issued), a single file checklist may be prepared for the basic contract file that covers all orders. The checklist and any associated closeout memoranda must cover all the orders and address any outstanding issues from individual orders. The checklist must state that it is being used to close all orders and cite the order numbers that it covers. A copy of the checklist will be placed in each individual order file. In this situation, the acquisition management system closeout data for each order needs only to have a closed date (they will all be the same). After all orders are closed in the acquisition management system, the basic contract record may also be marked closed. However, all appropriate closeout milestones for the basic contract in the acquisition management system record must be populated.

(b) Orders placed under contracts awarded by another agency (*e.g.*, GSA Federal Supply Schedule contracts). Orders placed under these contracts will be treated as separate contracts and must be closed individually. The acquisition management system record will be marked closed once the individual order has been closed and its closeout milestones entered.

(c) Basic agreements and basic ordering agreements (see FAR 16.7). Contracts issued under a basic agreement must be closed out on an individual basis, the same as any other contract would be. An agreement itself is considered closed upon its expiration or upon cancellation by either HUD or the contractor in accordance with FAR 6.702(b)(2).

(d) Blanket purchase agreements (BPAs) (see FAR 13.303). A BPA is considered closed when it has been completed, *i.e.*, when the purchases under it equal its total dollar limitation, if any, or when its stated time period has expired (see FAR 13.303-7).

2404.804-575 - Quick closeout procedure involving indirect cost rates.

(a) In accordance with FAR 42.703-1, a Federal contractor will establish with a single Federal agency (“lead agency”) the indirect cost rates (*e.g.*, labor overhead) that it will use on all its Federal cost-reimbursement contracts for a specified period of time normally, one year). Agencies other than the lead agency will accept the rates for use under their own cost-reimbursement contracts with that contractor. The lead agency usually assigns a “provisional” or “billing” rate that the contractor can use until a final rate is determined. The provisional or billing rate is later superseded by applicable final indirect rates. However, at the time HUD closes out the contract, a contractor’s final indirect rates for the period during which a contract was active may not yet have been determined. In such cases, FAR 42.708 requires COs to negotiate final indirect rates for any contract when the total unsettled indirect cost to be allocated to the contract does not exceed \$1 million and all of the conditions set forth in FAR 42.708 are met.

(b) When the quick closeout procedure is used, the CO will negotiate final indirect rates without seeking an audit.

(c) When using the quick closeout procedure, the CO will still take all other closeout steps listed in Handbook 2404.804 applicable to the contract.

(d) COs will review the contract file to ensure that there are no issues that would prevent the use of the quick-closeout procedure. The review of the file will include:

- (1) The contract's terms and conditions. Confirm whether the contract included any pre-negotiated overhead rates or advance understanding of specific items of indirect costs. If so, those rates or agreements will be used to establish the final cost/price of the contract;
- (2) Vouchers to determine the allowability and reasonableness of reimbursed costs; and
- (3) Any previous audit reports to determine if any adjustments were made to indirect costs that may be applicable to the contract at time of closeout.

2404.804-576 - Desk review of contracts/orders.

(a) Situations requiring a desk review. COs will ensure that a desk review is performed on cost-type contracts and orders. Results of the desk review may indicate that an audit should be performed notwithstanding the dollar amount of the award. The CO may request an audit from an OCPO cost/price analyst, another CO not involved in the contract, or an independent reviewing source (*e.g.*, contractor support or DCAA) at his or her discretion. Examples of circumstances that may indicate an audit is needed are listed below:

- (1) Fraud or waste is indicated;
- (2) Contract performance has been questionable, particularly if performance questions indicate cost concerns (*e.g.*, billed personnel may not have performed contract work);
- (3) There has been a high incidence of unallowable costs incurred under previous contracts or orders;
- (4) There have been frequent errors on the contractor's interim billings indicating that accounting controls may be poor;
- (5) The contractor overran the cost ceiling;
- (6) The contractor incurred substantial costs outside the contract period; or
- (7) The CO believes any issue warrants an audit.

(b) Conducting the desk review.

- (1) Review the contract file contents to:

- (i) Identify the period of performance, including option periods, if any. Costs incurred outside the contract period require the CO's prior approval (incurred before the contract award) or ratification (incurred after the end of the contract's performance period) to be allowable.
 - (ii) Determine the total cost and fees (if any) of the contract. Review the basic award and all modifications that added or subtracted costs or altered the fee structure (fixed, award, or performance fees). Determine if the contractor incurred or vouchered for more costs than were allowable under the contract (*i.e.*, had a cost overrun). Any costs claimed by the contractor in excess of the total costs set forth in a cost-reimbursement contract constitute a cost overrun requiring the CO's ratification, if deemed allowable. Failure to reach agreement with the contractor regarding the allowability of such costs is considered a dispute subject to the "Disputes" clause of the contract (see FAR clause 52.233-1, Disputes).
 - (iii) Determine the total amount of funds obligated and reconcile if less than the full value of the contract as stated in the basic award and all subsequent funds obligations and deobligations.
 - (iv) Identify any special provisions affecting allowability of claimed costs (*e.g.*, advance agreements on specific cost elements, ceilings on indirect rates, or cost sharing provisions).
 - (v) Review the price negotiation memoranda (PNMs) for the basic award and any modifications requiring a PNM for additional information related to costs and cost allowability.
 - (vi) Ensure that any change orders have been definitized (*i.e.*, an equitable adjustment was negotiated and incorporated into the contract via modification) and that there are no outstanding claimed costs resulting from them.
 - (vii) Ensure any subcontracts requiring CO's consent have been consented to (see FAR clause 52.244-2, Subcontracts). Any subcontracts requiring consent but not consented to by the CO must be documented via a memo to the file.
- (2) Review the contractor's submissions. When the contract document review is completed, review the contractor's final voucher, the contractor's response to the closeout letter, and any other relevant materials submitted by the contractor or COR that would affect the closeout process. Among the areas to be reviewed and reconciled are the following:
- (i) Verify that the contractor has responded to the closeout letter and submitted all requested closeout documents, including the final voucher if it has not already been submitted.
 - (ii) Verify that the final voucher reconciles to cumulative costs claimed and to the Contractor's release.

- (iii) Check the arithmetic accuracy of the final voucher.
- (iv) Verify that the indirect rates and other rates shown on the final voucher are consistent with any special provisions in the contract (*e.g.*, indirect rate ceilings or advance agreement on certain costs).
- (v) If time and materials, or labor-hour contract, verify that the correct loaded hourly rates were used for each category of labor billed.
- (vi) Ensure that the costs invoiced fall within the contract's period of performance and do not exceed either the total contract value or the obligated amount, whichever is less.
- (vii) If a cost sharing contract, ensure that the contractor has met its share in the manner designated in the contract (*e.g.*, actual costs, in-kind contributions).
- (viii) Verify that the final voucher is equal to the total allowable cost and fixed-fee (if any) less amounts previously paid.
- (ix) Ensure that either all disputes between the contractor and subcontractors have been resolved, or the contractor has released the Government from any obligation relating to a subcontractor's claim.

(c) Upon completion of the desk review, the CO will negotiate a resolution of any outstanding issues with the contractor and document the agreements reached in a dated, signed negotiation memorandum.

2404.804-577 - Audit of final contract costs.

(a) Requirement.

- (1) COs will obtain a final cost audit for all cost-reimbursement (see FAR Subpart 16.3), time-and-materials (materials portion only) (see FAR Subpart 16.6), and similar contracts and orders, that have \$1 million or more in unsettled indirect costs.
- (2) Combination cost-reimbursement/fixed-price contracts and orders. If a contract or order has a combination of cost-reimbursement and fixed-price elements, the contracting officer will obtain a final audit if the unaudited amount of indirect costs under the cost-reimbursement portion exceeds \$1 million.
- (3) Multiple cost-reimbursement orders. When multiple cost-reimbursement orders issued under a single indefinite-delivery contract are to be closed, and any one task/delivery order exceeds the \$1 million threshold (*i.e.*, not all orders must meet the threshold), the CO will include all the expired cost-reimbursement orders in the audit request.

(4) A final audit is not required if the CO determines that existing audit information for the contract is adequate. To be considered adequate, existing audit information must:

- (i) Cover most of the contract's or order's costs, with less than \$1 million remaining of unaudited indirect costs over the total contract or order life;
- (ii) Set forth final or provisional indirect rates that may be used to close the contract or order (see Handbook 2404.804-575); and
- (iii) Indicate that the contractor has an acceptable accounting system and internal controls.

(b) Requesting audits through Defense Contract Audit Agency (DCAA) or audit support services contracts. Submit requests for audits to OCPO's COR for DCAA Interagency Agreement or a contract for audit support services. (Note: IAA and contract(s) for audit support services are located within the acquisition management system) The COR will assign an OCPO case number, verify that funding is available for the audit and transmit the request. Include two copies of the contractor's final voucher, attached to the request. If the contractor has not yet submitted the final voucher, annotate the audit request form to that effect under "special circumstances." Enter the audit request milestone in the acquisition management system.

(c) Audit Resolution and Cost Settlement. The CO will resolve all audit findings and settle all interim costs prior to closing the contract or order. The CO will document the resolution in the contract or order file with a negotiation memorandum. The memorandum will state each issue (tracked to the audit finding) and describe its resolution and include the rationale why the resolution is reasonable or advantageous to the government.

2404.804-578 - Roles and responsibilities.

(a) Except as specifically directed by the Head of Contracting Activity, COs are responsible for closing out contracts assigned to their organizational units. The CO will:

- (1) Ensure that all contract actions are completed, including all outstanding claims, change orders, or value engineering change proposals, and that the files are ready for final closeout.
- (2) Provide required closeout documents to and obtain the completed documents from the contractor.
- (3) Ensure that all residual Government property remaining under the contract is properly disposed.
- (4) Ensure that applicable patent reports are cleared.
- (5) Determine the final amount of the contract (cost type contracts).

- (6) Ensure that the contractor has been paid for all work performed in accordance with the contract.
- (7) Ensure that any funds owed to the Government by the contractor are collected in a timely manner.
- (8) Ensure that the contractor performance has been finalized in the Contractor Performance Assessment Reporting System (CPARS).
- (9) Ensure that the file is properly retired to Federal records storage.
- (10) Ensure that all closeout information is properly entered into the acquisition management system.
- (11) Ensure that all PIV credentials have been returned by the contractor to the COR.

(b) The Contract Specialist will:

- (1) Notify the COR of the expiration and the necessary information needed for closeout.
- (2) Secure the contractors signature on the Contractor's Release form.
- (3) Complete OCPO's Closeout Checklist and Completion Statement.
- (4) Initiate the final contractor evaluation using CPARS, obtain the COR's evaluation, and process the final evaluation.
- (5) Obtain the COR's evaluation and acceptance of the final technical progress report.
- (6) Verify final SF-294 submission in eSRS.
- (7) Prepare a bilateral closeout modification. A model closeout letter is located in Acquisition Templates, (Approved and Mandatory) on the OCPO intranet site and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

- (8) Perform any of the tasks listed above as delegated by the CO.

(c) The COR will:

- (1) Ensure that the contractor has satisfactorily completed all required work required by the contract (*i.e.*, Final Inspection/Acceptance letter or report).
- (2) Certify that all deliverable items, including the final report, were delivered and accepted, and that all services were performed and accepted.

- (3) Provide final COR evaluation input on contractor performance in CPARS promptly after completion of all work under the contract.
- (4) Assist the CO in the settlement of any outstanding claims, change orders, equitable adjustments, or value engineering change proposals.
- (5) Verify that the contractor's report of inventions is accurate.
- (6) Verify that the contractor's inventory of residual Government property is accurate and provide instructions to the CO for the disposition of any nonconsumable property.
- (7) Review the completion voucher for cost-reimbursement type contracts to verify the costs claimed are consistent with the work performed and are reasonable.
- (8) Ensure all PIV credentials have been returned by the contractor.

2404.804-579 - Contract closeout problems.

(a) Occasionally, unusual circumstances may prevent closing a contract in strict accordance with this handbook. Some examples of circumstances and courses of action to take, include, but are not limited to:

- (1) Contractor no longer in business. Locate contractor's principal(s). If unsuccessful, proceed with desk review, document file and close the contract.
- (2) Contractor in bankruptcy. Consult with legal counsel.
- (3) Contractor unable to submit supporting indirect cost data for submission of final vouchers. Conduct a desk review. If necessary, request audit or retrieve another agency's current audit. After verification of indirect costs, proceed with appropriate closeout.
- (4) Contract amount cannot be reconciled with total payments due to payment discrepancies. The CO will research the payment history with COR, the contractor and the payment office prior to proceeding with the closeout.

2404.805 - Storage, handling and disposal of contract files.**2404.805-70 - Storage, handling, and disposal of contract files.**

(a) *Retention Period.* FAR 4.805 prescribes the time periods for the retention of contract documents. Retention period for contract documents is not affected by the type of medium that the information is stored in (*e.g.*, e-mails, SharePoint documents). FAR Subpart 4.7 provides direction on record retention by contractors. Note that the retention requirements apply to all contracts above

the simplified acquisition threshold that include either FAR clause 52.214-26, Audit and Records – Sealed Bidding, or FAR clause 52.215-2, Audit and Records – Negotiation.

(b) *Storage*. Contract files, in hard copy, will be sent to the Federal Records Center in accordance with the direction provided in HUD Handbook 2228.1, Records Disposition Management. Once the closeout process has been completed, contract files must be boxed up and forwarded to the Federal Records Center as follows:

- (1) Request boxes and accession number(s) from the Records Management Liaison Officer (RMLO).
- (2) Place closed completed contract file(s) in the box. Each box must be substantially full before forwarding to RMLO.
- (3) Complete the Record Storage form located on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Each item in each box must be listed on the form. If one contract fills two boxes, then list that contract number and contractor for both boxes. If there are 12 purchase orders in one box, then list each purchase order number on the form. Boxes must remain in the contract specialist's possession until the National Archives and Records Administration (NARA) provides approval to ship boxes.

- (4) Contact the RMLO who will in turn complete the SF135, Records Transmittal and Receipt, and request approval from NARA to ship the boxes to the Federal Records Center.

Subpart 2404.10 - Contract Line Items

2404.1001 – Policy.

2404.1001-70 - Contract line item number (LIN) format.

- (a) The numbering procedures of this subpart will apply to all:

- (1) Solicitations;
- (2) Solicitation line and subline item numbers;
- (3) Contracts as defined in FAR 2.1; and
- (4) Contract line and subline item numbers.

2404.1001-71 - Criteria for establishing LINs.

Contracts will identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items will have all four of the following characteristics. However, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing.

(1) *Single unit price.* Pricing LINS will include the actual or estimated quantity to be awarded, the unit price, and the extended value of the unit price times the quantity. All LINS must add up to the actual or estimated contract value. The item will have a single unit price or a single total price, except:

(i) When the items or services are being acquired on a cost-reimbursement contract;

(ii) When the contract is for a labor hour or time and materials contract and firm prices have been established for elements of the total price of an item, but the actual number and quantity of the elements are not known until performance. The CO may structure these contracts to reflect a firm or estimated total amount for each line item; or

(iii) When the contract is an indefinite delivery type contract and provides that the price of an item will be determined at the time a delivery order is placed and the price is influenced by such factors as the quantity ordered (*e.g.*, 10-99@\$1.00, 100-249@ \$.98, 250 +@\$0.95), the destination, the FOB point, or the type of packaging required.

(v) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter the description of the non-priced LIN, then “NSP”, then “priced under LIN” at the end of the description and \$0.00 in the unit price.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(3) *Separate delivery schedule.* Each contract line item or service will have its own delivery schedule, period of performance, or completion date expressly stated (“as required” constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the CO may create individual contract line items for the different destinations or delivery dates or may specify the different delivery dates for the units by destination in the delivery schedule.

(4) *Accounting classification citation(s)*

(i) Funds may be obligated no lower than the LIN level. Sub-LINS may be established as Not Separately Priced (NSP) only.

(ii) Each contract line item will reference a single accounting classification citation except as provided in Handbook 2404.1001-73(a)(1)(iii) below.

(iii) The use of multiple accounting classification citations for a contract line item is authorized in the following situations:

(A) A single, nonseverable deliverable to be paid for with multiple sources of funds or appropriations; or

(B) A modification to an existing contract line item for a nonseverable deliverable where the modification is not properly chargeable to the original source of funds.

(b) All subline items under one contract line item must be the same contract type as the contract line item.

(c) For a contract that contains a combination of fixed-price line items, time-and-materials/labor hour line items, and/or cost-reimbursement line items, identify the contract type for each contract line item in Section B, Supplies or Services and Prices/Costs, to facilitate appropriate payment.

(d) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately

prices these functions, COs may establish separate contract line items for the functions; however, the separate line items must conform to Handbook 2404.1001-71(a).

(e) Reimbursable travel may be established as a LIN, if it is tied to a specific deliverable.

2404.1001-72 - Numbering procedures for LINs.

(a) LINs will consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999. Within a given contract, the item numbers must be consecutive. Once numbers are skipped, the CO will not be able to go back and use the skipped numbers and main line item numbers cannot be skipped on Contracts. For example, a CO may not establish LIN 0005 and 0007, skipping 0006. The LINS for Options must start with the next consecutive number from the prior year. For example, if the Base Year last LIN was 0005, the first LIN for Option 1 would be 0006 and not 1001.

(b) The contract line item number will be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(c) Once a contract line item number has been assigned, it will not be assigned to another, different, contract line item in the same contract.

2404.1001-73 - Criteria for establishing contract subline items.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. COs may designate quantities associated with each subline item but may not designate prices for each subline item because funding will not be obligated at the subline level.

(a) *Separately identified subline items.*

(1) Subline items may be used instead of contract line items to facilitate delivery tracking or for other contract management purposes. Such subline items will be used when items bought under one contract line item number:

(i) Are to be packaged in different sizes, each represented by its own NSN;

(ii) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(iii) Identify parts of an assembly or kit which must be separately identified at the time of shipment or performance.

(2) Each separately identified contract subline item will have its own:

(i) Delivery schedule, period of performance, or completion date; and

- (ii) Identification (*e.g.*, NSN, item description, manufacturer's part number, scope of work, description of services).

2404.1001-74 - Numbering procedures for subline items.

- (a) Number subline items by adding two alpha characters to the basic contract line item number.

(1) *Separately identified subline items.* Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.

- (i) Do not use the letters I or O as alpha characters.

(ii) Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

- (iii) Within a given contract line item, the subline item numbers will be consecutive.

2404.1001-75 - Contract modifications.

- (a) If new items are added, assign new consecutive contract line or subline item numbers, in accordance with the procedures established in Handbook 2404.1001-71 through 2404.1001-74.

- (b) Modifications to existing contract line items.

(1) If the modification relates to existing contract line items, the modification will refer to those item numbers.

(2) Modifications may not add LINs that were previously skipped in a non-consecutive numbering scheme.

(3) If the CO decides to assign new identifications to an existing contract, the following rules apply:

- (i) *Definitized and undefinitized items.*

(A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If

the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract line item or subline item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract line item or subline item number will remain with the unchanged quantity. Assign the changed quantity the next consecutively available number.

(ii) *Undefinitized items*. In addition to the rules in Handbook 2404.1001-75(b)(3)(i), the following additional rules apply to undefinitized items.

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next consecutively available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract line item or subline item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next consecutively available number.

(C) If the modification both affects only a partial quantity of the existing contract line item or subline item and definitizes the price for the affected portion, the definitized portion will retain the original item number. If there is any undefinitized portion of the item, assign it the next consecutively available number. However, if the modification definitizes the price for the whole quantity of the line item, and the price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price (and insert new price into the acquisition management system), the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract line item or subline item but does not change the delivery schedule or definitize price, the unchanged portion will retain the original contract line item or subline item. Assign the changed portion the next consecutively available number.

Subpart 2404.13 – Personal identity verification.

2404.1301 – Policy.

2404.1301-70 - Contractor Personnel Clearances.

The approval to use HUD space does not convey any approval of individual contractor employees to access HUD facilities and systems. Contractor employees who will be expected to work onsite

in a HUD facility or have more than infrequent access to the facility (*e.g.*, such as a visitor), must undergo an appropriate background investigation and personal identity verification (PIV) in accordance with Homeland Security Presidential Directive (HSPD) 12 and HUD's OCHCO procedures (see also HUDAR 2437.110 and 2452.237-75). If contractor personnel will be expected to have access to any HUD system(s), they must undergo a similar background investigation (see also HUDAR 2439.107 and 2452.239-70). However, contractor personnel who will require access to both HUD facilities and HUD systems need only undergo a single background investigation and PIV procedure.

2404.1301-71 – Responsibilities.

(a) The CO must ensure that Contractor employees, including subcontractors and consultants, who will be expected to work onsite in a HUD facility or have more than infrequent access to the facility (*e.g.*, such as a visitor), or Contractor employees, including subcontractors and consultants, who will be expected to have access to any HUD system(s), undergo an appropriate background investigation and personal identity verification (PIV) in accordance with Homeland Security Presidential Directive (HSPD) 12. HUD's Personnel Security Division (PSD) within OCHCO, is responsible for verifying contractor employee personal identity and the issuance of PIV cards in accordance with FAR 4.1301(c). (Also see HUDAR 2437.110 and 2452.237-75, Access to HUD Facilities (including any deviations), and HUDAR 2439.107(a) and 2452.239-70, Access to HUD Systems (including any deviations).)

(b) In accordance with the PSD procedures and HUDAR clauses 2452.237-75, Access to HUD Facilities (including any deviations), and 2452.239-70 Access to HUD Systems (including any deviations), the COR for an assigned contract must:

- (1) Identify all contractor employees that will require PIV cards and obtain required background information forms and provide them to PSD;
- (2) Serve as the sponsor for all contractor employees requiring PIV cards on contracts to which the COR is assigned and as such, coordinates with PSD to ensure that the employees are promptly vetted and issued PIV cards;
- (3) Direct contractors as to how to return PIV cards during the performance of, and at the completion of the contract;
- (4) Notify the contractor immediately when HUD has determined that any of the contractor's employees is unsuitable or unfit to be permitted access to a HUD facility or system;
- (5) Notify PSD immediately when an issued PIV card is no longer needed by a contractor employee; and
- (6) Report quarterly to the CO all contractor employees in possession of PIV cards. The report must include the contractor employee's name, the contractor's name and the number(s) of the contract(s) on which the employee works. The report will identify all

contractor employees who ceased to require PIV cards during the period covered by the report.

(c) In accordance with HUDAR clauses 2452.237-75, Access to HUD Facilities (including any deviations), and 2452.239-70, Access to HUD Systems (including any deviations), contractors will:

(1) Deliver to the COR all forms required by the clauses necessary for the completion of background investigations. The contractor will deliver the completed forms immediately upon award of the contract for all contractor employees and subcontractor employees known to require access to HUD facilities and/or systems. During the course of the contract, the contract must also provide forms for any employees assigned to work on the contract who have not already received a PIV credential (*e.g.*, new hires);

(2) Ensure that employees and subcontractor wear PIV cards while they are in HUD facilities;

(3) Be responsible for all PIV cards issued to the contractor's employees and subcontractor employees and immediately notify the COR if any badge(s) cannot be accounted for;

(4) Immediately notify the COR when an employee or subcontractor employees no longer requires a PIV card (*e.g.*, employee terminates employment with the contractor, employee's duties no longer require access to HUD facilities). The COR will instruct the contractor as to how to return badges. The contractor will not return PIV Cards to any person other than the individual(s) named by the COR; and

(5) Immediately notify any employee or subcontractor employee, whom HUD has determined to be unsuitable or unfit to be permitted access to a HUD facility, that the employee no longer has access to any HUD facility, remove the employee from any such facility, and provide a suitable replacement.

(6) The CO will insure that the contractor submits a report to the CO and COR no later than 5 calendar days after the end of each calendar quarter that provides the status of each employee, subcontractor employee or consultant who is required to work in a HUD facility during the performance of the contract. At a minimum, the report shall identify the contractor and the contract number, and list for each employee the following information:

—

(i) Employee name;

(ii) Name of HUD facility where employee works;

(iii) Date background check submitted;

(iv) Date PIV Card issued;

(v) PIV card number;

(vi) Date employee no longer has need of HUD PIV Card;

(vii) Date CO and COR were notified; and

(viii) Date PIV Card returned to COR.

(d) The CO and the COR will verify that all PIV cards or other similar badges are returned upon completion of a contractor's employment.

(e) The CO and the COR will verify that all PIV or other similar badges are returned prior to final contract payment. If all PIV cards or other similar badges are not returned, final payment may be delayed.

Chapter 2405 – Publicizing Contract Actions

2405.000 – Scope of chapter.

This chapter prescribes policies and procedures for publicizing contract opportunities and award information (see FAR Part 5 and HUDAR Part 2405 for related information).

Subchapter 2405.1 – Dissemination of Information

2405.101 - Methods of disseminating information.

2405.101-70 – Publicizing simplified acquisition opportunities - \$15,000 - \$25,000.

(a) To ensure that OCPO is in full compliance with the public notice requirement, all notices or copies of solicitations for competitive, open-market acquisitions expected to exceed \$15,000 but not exceed \$25,000 and not exempt from the public notice requirement will be posted to the OCPO internet site.

(b) In accordance with FAR 5.101(a)(2), the notices or copies of solicitations will remain posted to the website for at least 10 days or until after quotations have been opened, whichever is later.

(c) A copy of each notice or solicitation for a competitive, open-market acquisition that is expected to exceed \$15,000 but not exceed \$25,000 and is not exempt from public notice must be sent **not later than two business days in advance of the solicitation issuance date**, via email attachment in MS Word format, to the Office of Policy, Systems, and Risk Management for posting to the above cited HUD Web page.

Subchapter 2405.2 – Synopses of Proposed Contract Actions

2405.203 – Publicizing and response time.

The contracting officer, in consultation with the program office, may determine that longer periods than the minimums required at FAR 5.203 are necessary or advisable to better obtain competition.

2405.205 – Special situations.

(c) *Special notices.* Special notices are an integral part of market research and acquisition planning and they serve to initiate the exchange of information among all interested parties. *Exploring the World of Market Research Guide* provides clarification and augments the information contained in FAR Subpart 5.2 and Part 10 concerning publicizing special notices. These samples may be tailored to meet the needs of the specific notice. The guide provides the samples of the following special notices:

(1) Exhibit 4, FedBizOpps Notification of a HUD Industry Day, Sample.

(2) Exhibit 5, FedBizOpps Notification of a Pre-Solicitation Conference Sample.

(3) Exhibit 6, FedBizOpps Notification of a Pre-Proposal Conference Sample.

Exploring the World of Market Research Guide, including the above cited exhibits, is located on the OCPO intranet site.

2405.207 – Preparation and transmittal of synopses.

(a) All synopses, including those for sole-source contract extensions will provide a “clear and concise description of the supplies or services” that is sufficient to allow a prospective offeror to decide whether to request a copy of the solicitation. Failure to do so could result in delays, extra work and additional costs to the Department.

Chapter 2406 – Competition Requirements

2406.000 – Scope of chapter.

This chapter prescribes policies and procedures to promote full and open competition in the acquisition process, full and open competition after exclusion of sources, other than full and open competition, and the roles of the competition advocates (see FAR Part 6 and HUDAR Part 2406 for related information). *Preparation Guide for Justification and Approvals (J&As) for Other Than Full and Open Competition under FAR Parts 6, 8 and 13*, is located on the OCPO intranet site.

Subchapter 2406.3 - Other than Full and Open Competition

2406.303 – Justifications.

2406.303-2 - Content.

2406.303-270 – Efforts to obtain competition.

The justification must describe the extent of effective competition obtained or anticipated for the acquisition, including the efforts made, or to be made, to solicit offers from as many potential sources as practicable (*e.g.*, publication of Sources Sought Synopsis at FedBizOpps). The justification must include a statement as to whether a FedBizOpps notice was or will be publicized as required by FAR Subpart 5.2 and if not, which exception under FAR 5.202 applies. It must also explain why sources were not sought or other offers not obtained.

2406.303-271 – Market research.

The justification must describe the specific market research activities that were conducted to identify potential qualified sources and the results. If market research was not conducted, the justification must explain fully why market research was not accomplished. See Handbook Chapter 2410 for guidance on conducting Market Research.

2406.305 - Availability of the justification.

2406.305-70

All J&As will be assigned a control number. Control numbers are found on the J&A Log located on the CPO-designated SharePoint site.

2406.305-71

The CO's manager is responsible for updating the J&A log on the designated OCPO SharePoint site.

2406.305-72

The CO's manager will post the justification notice as required by FAR 6.305, update the J&A log with the date posted and notify the Competition Advocate by email of the publication date.

Subchapter 2406.5 – Advocates for Competition.

2406.501 - Requirement.

The CPO designates, in writing, HUD's Departmental Competition Advocate and may designate an alternate Competition Advocate to act in the absence of the Departmental Competition Advocate. The Competition Advocate also serves as the Department's Task/Delivery Order Ombudsman. The specific duties and responsibilities of the Competition Advocate are set forth at FAR 6.502. The CPO's designation memorandum will be posted to HUD OCPO's internet Web site.

Chapter 2407 – Acquisition Planning

2407.000 – Scope of chapter.

This chapter prescribes policies and procedures for acquisition planning (see FAR Part 7 and HUDAR Part 2407 for related information).

Subchapter 2407.1 – Acquisition Plans

2407.102 – Policy.

2407.102-70 – Annual Strategic Acquisition Plan (ASAP).

(a) *Annual requirement for ASAP.* Each HUD office that will require contract support in the upcoming fiscal year must prepare an Annual Strategic Acquisition Plan (ASAP).

(b) *ASAP structure.* The ASAP must include all of the office's known acquisition requirements (new contracts, new task and delivery orders, options to be exercised, and other monetary modifications) exceeding the micro-purchase threshold (see the definition of micro-purchase threshold in FAR 2.101 for dollar amount(s)) and include only those contract actions necessary to support strategic goals and meet on-going operational needs expected to be awarded during the upcoming fiscal year. The ASAP consists of an Advanced Procurement Plan (APP) for each planned action for all program offices. The APPs will roll up to establish each program offices' and HUD's ASAP Portfolio. Each APP must be consistent with statutory authority, reflect the most efficient acquisition method, must not duplicate an existing acquisition.

(c) *Percent of total obligations.* The ASAP will provide for submission of actions equal to 70 percent of the total obligations to the appropriate contracting activity by March 31 of the fiscal year in which the funds are planned to be obligated.

(d) *Consistency with budget request.* The ASAP is not a "wish list." The ASAP must be consistent with the program office's budget request, as submitted to Congress, for the fiscal year in which the contract action will be executed and include all requirements regardless of the type of funds to be used (*e.g.*, salaries and expenses, Working Capital, program funds, etc.) or the ultimate funding source (*e.g.*, other HUD offices or Federal agencies). It should also account for use of multi-year and no-year rollover funding to be obligated. There may be cases where a program office will provide funds for a requirement (sponsoring office), but another program office will process the acquisition (originating office). If any or all of the funding for a contract action will be provided by a sponsoring office, the originating office will be responsible for all coordination with the funding source(s) before submitting its ASAP. The originating office will also include the APP on its ASAP. The sponsoring office will not include the APP on its ASAP. If a planned action will not be fully funded in the year in which it is awarded, the plan must describe how it will be funded ultimately (*e.g.*, incremental funding or the use of options). This plan must comply with all contract funding rules, including that contracts for nonseverable services must be fully funded at the point of obligation and may not be funded incrementally. If the plan includes use of nonseverable increments, care must be taken to properly divide the entire action into individual units of nonseverable services that each individually provide a full benefit to the Department.

(e) *Uses for ASAP.* The ASAPs are used for workload and staff planning, as well as developing the Agency's small business goal with the Small Business Administration (SBA). They are also used to assess the ability of the program offices to meet the target requisition release date in the APPs, to award actions by the target award date in the APPs, and to track small business program accomplishments.

(f) *Requesting ASAPs.* The CPO will issue a call memorandum to all principal office heads requesting ASAPs for the upcoming fiscal year. ASAPs will be due by the date specified in the call memorandum. Failure to submit an ASAP by the due date may result in delays in OCPO's awarding of the ASAP's contract actions as timely ASAPs will take precedence over late ASAPs. Any APPs not approved by the due date will be cancelled and considered unplanned actions.

(g) *ASAP coordinator.* Each principal office head will designate an individual to serve as the ASAP coordinator to oversee the ASAP development and serve as the primary point of contact with OCPO and OSDDBU. This individual should have overall responsibility and authority for the office's ASAP and will be at an appropriate organizational level to command the attention of all program elements and establish program priorities.

(h) *Submission of APPs.* All APPs must be submitted electronically via the acquisition management system. The program office must enter an APP for each action contained in the ASAP into the acquisition management system and enter all information required for each action (e.g., dollar value, acquisition strategy, and award milestones). (Note: APPs are not to be confused with the actual requisitions, which the program office must create in the acquisition management system after the APP has been approved and released when requesting OCPO to process the specific contract actions.)

(i) *APP review and approval.*

(1) After the Program Office head has approved its' ASAP, the ASAP Coordinator will be given approval from OCPO to begin routing the APPs for review and approval. If an APP is disapproved, the ASAP coordinator must make the revisions and re-route the APP back through all approvers.

(2) OSDDBU will review APPs primarily to identify contracting opportunities for small businesses with emphasis on meeting HUD's established small business contracting goals in effect for the plan's fiscal year. If OSDDBU notes incorrect data, the APP will be disapproved, and recommended changes will be noted in APP comments. The ASAP coordinator must make all recommended changes or confirm the data before the APP can proceed to the next approver.

(3) Each OCPO approver or designee will review each ASAP with an emphasis on the plan's compliance with the requirements set forth in FAR 7.102 and this chapter, reasonableness of the proposed acquisition strategy for the planned actions, use of performance-based contracting methods, maximizing the use of strategic sourcing, avoidance of duplicative acquisitions, and consolidation of like requirements. OCPO may

obtain review by other offices (*e.g.*, OGC, OCIO and OCFO) as deemed necessary. If an OCPO approver finds incorrect data, the APP will be disapproved and recommended changes will be noted in APP comments. The ASAP coordinator must make all recommended changes or confirm the data before the APP can proceed to the next approver.

(4) Once all deficiencies or errors are corrected, the approver will approve and release the ASAP.

(j) *ASAP reviews and updates.* Program offices must review their ASAPs on a monthly basis and initiate any needed revisions to them (*e.g.*, removal of planned actions that are canceled due to changes in program budget or direction, or addition of new emergency-related actions). The ASAP information must also be reviewed and updated in HUD's forecast of contracting opportunities.

(k) *Confidentiality of ASAP information.* The information contained in the ASAP is source selection information as defined at FAR 2.101 (see also FAR 3.104-4) and may not be disclosed unless authorized by the CO in writing.

(l) *Unplanned requirements.* Unplanned acquisition requirements are those that the program office becomes aware of after the ASAP is approved and released. As they become known, program offices will include such actions in the forecast update and enter them into the acquisition management system. Normally, the award of planned actions will take precedence over that of unplanned actions.

(m) *Priority for planned actions.* COs will make every effort to award all procurements expeditiously and before the end of the fiscal year. Therefore, planned contract actions requisitioned by their planned requisition date will have priority over unplanned actions unless the program office provides the CO with its proposed accommodation for placing a higher priority on an unplanned action (*e.g.*, moving a comparable planned action to a lower priority).

(n) *Other than competitive actions.* For each of the types of actions listed below, the program office will provide the applicable completed form and all required supporting documentation to the CO as soon as possible after the ASAP has been approved and before the preparation of the IAP. If an action is unplanned, the program office will provide the applicable completed form to the CO before the IAP is prepared. The forms and samples may be found on the OCPO template intranet site at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(1) For new contracts using other than full and open competition pursuant to FAR Part 6, use form HUD-24012, *Justification and Approval for Other than Full and Open Competition Under FAR Parts 6, 8 and 13*).

(2) For new GSA FSS Schedule orders when the number of GSA contractors to be considered will be limited, use form HUD-24013, *Limited Source Justification – Federal Supply Schedule Orders and BPAs Exceeding the Simplified Acquisition Threshold*

(Justification and Approval for Other than Full and Open Competition under FAR Parts 6, 8 and 13).

(3) For sole source or brand name justifications issued under FAR Subpart 13.5, use the sample justification located on the OCPO template intranet site.

(4) For sole source awards for simplified acquisitions under FAR 13.106-1(B)(1), the CO shall complete the sample determination located on the OCPO template intranet site.

(o) *Bundling actions:* OSDDBU must review any proposed action that involves substantial bundling if it was not reviewed and approved as part of the ASAP approval process. The OSDDBU Business Utilization Development Specialist must assist OCPO in identifying alternative strategies that would reduce or minimize the scope of the bundling (see also FAR 7.107 and FAR 10.001).

(p) *COR appointment:* In accordance with FAR 7.104, the CO will ensure that the program office nominates, and the CO appoints the COR as prescribed in Handbook 2401.602–2.

2407.102-71 – Individual acquisition plans.

(a) COs will prepare an individual acquisition plan (IAP) for each proposed action described below whether the action is planned (*i.e.*, included in the ASAP) or unplanned:

(1) New contract awards, competitive and other than competitive, exceeding the simplified acquisition threshold (SAT);

(2) Modifications to contracts that add new work which is out of scope;

(3) Task/delivery orders issued under an existing contract; and

(4) Interagency acquisitions and interagency agreements (see Handbook 2417.5).

(b) *No abridgement of governing regulations or policies.* COs will comply with all applicable acquisition regulations and formal policies regardless of resulting delays in program implementation or loss of fiscal year funding. Program offices and COs will take all regulatory and policy requirements into consideration when developing the IAP and the award schedule.

(c) *IAP Preparation.* The CO is responsible for initiating, developing, and maintaining IAPs. The CO will initiate the development of the IAP as soon as practicable after the acquisition action has been assigned to him/her. The program office (*e.g.*, COR) is expected to assist in the IAP's preparation as requested by the CO. The CO will coordinate with other stakeholders as appropriate (*e.g.*, legal counsel). The CO will obtain the input of the integrated acquisition team (IAT) at the initial IAT meeting. The mandatory template for the IAP can be accessed through the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) *IAP Acquisition strategy*. The CO will review and refine, if needed, the acquisition strategy proposed in the ASAP for each new award.

(e) *Acquisition Review Council (ARC) approval of IAP*. The CO will present the draft IAP to the ARC for approval of the acquisition strategy as prescribed at Handbook 2407.102-73.

(f) *OSDBU concurrence of IAP*. OSDBU must concur on the IAP for a new award (contract or order) that is not set aside for small business. This includes any new award for which acquisition strategy is changed to remove the action from a small business set-aside. New IAAs are exempt from this concurrence requirement.

(g) *Program office concurrence of IAP*. The applicable program office official will concur on the IAP as follows:

- (1) For actions exceeding the SAT up to \$1 million, by a program office official at the Division Director or equivalent level;
- (2) For actions exceeding \$1 million up to \$5 million, by the program office Director (*e.g.* Director of Single-Family housing) or equivalent level; and
- (3) For actions exceeding \$5 million, by the Deputy Assistant Secretary or equivalent.

(h) *IAP approval*. The applicable OCPO official will approve the IAP as follows:

- (1) For actions up to \$1 million, the CO who will execute the action;
- (2) For actions exceeding \$1 million up to \$5 million, the OCPO Division Director or Field Contracting Operations Director; and
- (3) For actions exceeding \$5 million, the responsible ACPO.

(i) *Resolution of IAP disagreements*. In the event of a disagreement between the CO and the program office concerning the content or acceptance of a plan by the program office, the OCPO official one level above the approving official will render a final decision.

(j) *Other actions requiring approval*. Approval of an acquisition plan will not constitute approval for any action that requires a separate approval under the FAR, HUDAR, or other formal policy (*e.g.*, deviation from an existing FAR or HUDAR contract clause described in the plan or justification for other than full and open competition).

(k) *Milestone entry in the acquisition management system*. The CO will ensure that all pre-award milestones and their dates are entered in the applicable acquisition management system plan record within five (5) working days after their acceptance by the program office. Milestone plans are only required for new awards and option modifications exceeding the SAT.

(l) *Changes to the approved IAP.* The approving official must approve significant changes in the acquisition plan before they are implemented. The CO for the acquisition should discuss potential changes to the IAP with the approving official before requesting formal approval to determine if the changes are significant. Normally, a substantial change to the acquisition strategy will require approval.

(m) *Confidentiality of IAP contents.* The information contained in the IAP is source selection information as defined at FAR 2.101 (see also FAR 3.104-4) and may not be disclosed unless expressly authorized by the CO in writing.

2407.102-72 – Integrated acquisition teams.

2407.102-7201 – Definition.

(a) “Integrated Acquisition Team (IAT)” is an ad hoc group of contracting, program, and technical personnel assembled to accomplish an acquisition. IAT members should be involved from planning through completion of the contract action.

2407.102-7202 – Purpose.

(a) The IAT is intended to ensure that COs use the most efficient and effective acquisition strategies when contracting for HUD’s program and mission support needs and that Government-wide and Departmental rules, policies, priorities, and initiatives are properly considered. (See Handbook 2407.102-73 – Acquisition Review Council)

(b) The IAT ensures that the following goals and objectives are met:

- (1) Promote effective and timely collaboration between the program customer, the contracting officer, contract specialist and the Acquisition Liaison Unit early in the individual acquisition planning process;
- (2) Ensure HUD’s procurements comply with the FAR, HUDAR and HUD Handbook 2210.3;
- (3) Ensure that the CO and CS are familiar with the requirements that they are procuring;
- (4) Maximize small business opportunities for HUD’s contracting requirements;
- (5) Achieve HUD’s small business contracting and subcontracting goals;
- (6) Leverage contracts that are outcome or performance-based;
- (7) Ensure that the most appropriate and efficient acquisition methods are used;
- (8) Consider OMB initiatives in acquisitions (*e.g.*, reducing risky type contracts, reducing management support services contracts, use strategic sourcing, etc.);

(9) Prevent improper bundling;

(10) Promote adequate competition; and

(11) Consider other significant issues, such as risks associated with inherently Governmental functions and services closely related to inherently governmental functions, costs associated with on-site contractor performance on site, ensure data rights where needed, identify transitions periods, etc.

2407.102-7203 – Applicability.

IATs will be used for all planned and unplanned contracts, task orders and option modifications exceeding the SAT.

2407.102-7204 – Membership.

(a) IATs should include the minimum number of representatives needed to accomplish the acquisition. The specific membership will be dictated by the characteristics of the individual acquisition, *e.g.*, complexity, dollar value, or importance to program or HUD mission. Typically, the IAT will include:

(1) CO or contract specialist;

(2) Acquisition Liaison Unit (ALU) (except for modifications used to exercise option periods);

(3) COR, as applicable;

(4) OCIO if the action includes an IT requirement subject to the Federal Information Technology Reform Act (FITARA);

(4) Project manager, if the program office has designated one;

(5) Competition Advocate for sole source requirements requiring the approval of the competition advocate;

(6) Legal advisor, including program office counsel if necessary; and

(7) Other technical or program staff whose knowledge and expertise is essential to the fulfillment of the specific procurement, *e.g.*, IT personnel, Program Budget, ALU representative, OSDBU.

2407.102-7205 – Establishment of the IAT.

(a) *IAT leader.* The IAT leader will be either the CO or contract specialist assigned to the action and has overall responsibility for the accomplishment of the acquisition. If necessary, another member may be designated as the alternate to assume leadership in the absence of the IAT leader to ensure the successful execution of the acquisition; however, the CO retains the responsibility for the acquisition process.

(b) *Authority.* The designation as IAT leader does not confer any CO authority. IAT leaders who are not COs may not perform any function or take any action requiring a CO's authority (e.g., signing contracts).

2407.102-7206 – IAT meetings.

(a) *Initial meeting.* No later than 30 days after submission of the program office's Annual Strategic Acquisition Plan (ASAP), the supervisor will assign each proposed new acquisition to a buyer. No later than 30 days after assignment, for all new acquisitions expected to exceed the FAR Part 13 Simplified Acquisition Threshold, the buyer will review all assigned new acquisitions and will assess each action (including the Target Requisition Release Date (TRRD), the Target Award Date (TAD), and any comments in the Advanced Procurement Plan (APP) to determine if the first IAT meeting needs to take place prior to approval of the ASAP (e.g. award or solicitation issuance might need to occur in the first quarter of the FY).

(1) The buyer will work with the supervisor and program customer to schedule and hold the first IAT meeting to ensure that the TRRD and TAD are met. The buyer will not wait until the APPs/ASAPs are approved to schedule meetings that are necessary to ensure timely award. The supervisor will conduct a first IAT meeting for all acquisitions requiring an IAT no later than 45 days after approval of the ASAP, utilizing the IAT checklist as a guide for discussions.

(2) The IAT Checklist is considered a mandatory template and as such, is found in the Acquisition Templates (Approved and Mandatory) on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(3) The first IAT meeting will include creation of the requisition and development of the complete milestone plan in the acquisition management system, including responsibilities for meeting all milestones.

(b) *Follow-on IAT meetings.* Follow-on meetings are to be scheduled as necessary to ensure requirements are fully defined and requisitions submitted as scheduled in the Advanced Procurement Plan (APP) and milestone plan. These are collaboration sessions, not status updates. Milestone plans will be updated in the acquisition management system as needed during these meetings to ensure all stakeholders are kept abreast of the progress.

(c) *IAT Meetings for Options.* The CO shall hold an IAT meeting for options exceeding the SAT as defined in FAR 2.101. During that meeting, a milestone plan will be established.

(d) *IAT Documentation.* All IAT meetings will be documented with the attendance sheets and synopsis of discussions held. Attendance and synopses will be uploaded into the acquisition management system, solicitation folder. Failure to document actions taken will be considered evidence that required activities did not occur.

2407.102-73 – Acquisition Review Council (ARC).

2407.102-7301 - Purpose.

The ARC's primary goals are to ensure that COs use the most efficient and effective acquisition strategies when contracting for HUD's program and mission support needs and that Government-wide and Departmental rules, policies, priorities, and initiatives are properly considered. In particular, the ARC reviews proposed acquisition strategies for new contract and task order awards as required in this section to ensure that:

- (1) Small business concerns of all types are provided the maximum practicable opportunity to compete for HUD's contracting requirements, and proposed actions do not include improper bundling that would inhibit or preclude small business participation;
- (2) HUD's small business contracting goals are achieved to the greatest extent practicable;
- (3) Contracts are outcome or performance-based to the greatest extent practicable;
- (4) The most appropriate and efficient contracting methods and contract types are used;
- (5) Commercial items are purchased whenever practicable to meet HUD's requirements;
- (6) All opportunities for strategic sourcing are taken;
- (7) Awards are made competitively to the greatest extent practicable;
- (8) Government-wide (*e.g.*, OMB/OFPP) acquisition initiatives are addressed (*e.g.*, reducing the use of risky contract types and management support services contracts);
- (9) Other significant issues are considered (*e.g.*, inherently Governmental functions and services closely related to inherently Governmental functions, on-site performance by contractors, information technology requirements, and need for contractor employee clearances); and
- (10) Provide the CO and CS the opportunity to present their acquisitions directly to senior managers to display their knowledge of the project and hone their written and oral presentation skills.

2407.102-7302 - Membership.

ARC membership consists of a chairperson and five required members. The DCPO or designee acts as the chairperson. Required members include the AACPO for Policy, Systems and Risk Management or designee; legal counsel from the Office of General Counsel (OGC) Procurement Law Division (PLD); the ACPO of the Operations organization providing the presentation; a representative from the Office of Small and Disadvantaged Business Utilization (OSDBU) and a representative from the Acquisition Liaison Unit (ALU).

2407.102-7303 – Applicability.

Actions subject to ARC review.

(a) CO or CS will present proposed acquisitions to the ARC sometime after the first Integrated Acquisition Team (IAT) meeting is held and the CO has developed a draft individual acquisition plan (IAP), but prior to completion of the requisition. This timing is important so that major issues identified during the review can be addressed prior to a final requisition being processed in the acquisition management system.

(b) Generally, all proposed new acquisitions (contracts, task/delivery orders, Blanket Purchase Agreements (BPA), and Interagency Acquisitions), that exceed \$2 million (including option periods) require an ARC review. However, the following acquisitions are waived from ARC requirements:

(1) Interagency agreements that are not assisted interagency acquisitions;

(2) Task orders against single-award HUD Indefinite Delivery/Indefinite Quantity (IDIQ) contracts;

(3) Competitive task/delivery orders against HUD multiple-award IDIQ contracts or Blanket Purchase Agreements (BPAs) if the total value of the requirement, including option periods, is \$10 million or less; and

(4) Sole source 8(a) contracts if the total value of the requirement, including option periods, is \$4 million or less and the total period of performance is for five years.

(c) The DCPO retains the right to require an ARC review of acquisitions fitting within the waiver parameters if the DCPO considers them to be high risk.

(d) ARC waivers do not constitute waivers of other internal or legal review requirements specified elsewhere.

2407.102-7304 - ARC procedures.

(a) *ARC Schedule.*

(1) The ARC is scheduled to convene the second and fourth Monday of every month. If no presentations are scheduled, the ARC will not meet. The ARC may conduct out-of-cycle meetings to accommodate increased workload or unplanned acquisitions.

(2) Supervisors will work with their staff to plan and schedule presentations to ensure there are no delays in the acquisition and to restrict out of cycle presentations of unplanned requirements that cannot wait for the next available slot in the schedule. The supervisor will also monitor scheduled presentations to ensure staff is fully prepared to present the requirement at the designated ARC to avoid cancellations.

(b) Supporting Documentation.

(1) The following documents must be loaded to the ARC SharePoint site three business days prior to the ARC meeting:

- (i) Draft Individual Acquisition Plan;
- (ii) IAT Meeting Checklist;
- (iii) ARC PowerPoint presentation (see paragraph below); and
- (iv) Baselined Acquisition Management System Milestone Plan.

(c) ARC Process.

(1) The supervisor will be provided all necessary supporting documentation by the assigned CO. The supervisor will review the documentation for completeness and accuracy and, when acceptable, upload to the ARC SharePoint site. Documents must be loaded to the ARC SharePoint site at least three business days prior to the ARC meeting.

(2) The CO and CS will present the proposed acquisition to the ARC for review. Non-OCPO personnel will normally not attend the presentation without prior approval of the CPO or DCPO. The CO/CS will be sufficiently prepared to answer related questions regarding the proposed acquisition. The following are frequent areas of focus for the ARC:

(i) Appropriateness of the acquisition strategy relative to the requirement:

- (A) What is being procured? Is this a new or repeat acquisition? Did the previous contract instrument yield the expected results?
- (B) Are the proposed contracting method and contract type appropriate to meet the program objectives?
- (C) What methods of meeting the requirement were explored? What risks exist in the proposed strategy?

(ii) Business considerations:

- (A) Does market research support the proposed strategy?

- (B) Is the contract type best suited to the requirement?
- (C) Does this action present an opportunity for strategic sourcing?
- (D) Does the requirement lend itself to the use of incentives?
- (E) How does the strategy address HUD's small business contracting goals?
- (F) Is funding available for the estimated total cost of the requirement?

(iii) Other major or unique issues (including, but not limited to):

- (A) Performance based contracting and adequate surveillance plans;
- (B) Appropriate technical evaluation factors;
- (C) Data and patent rights;
- (D) Contractor access to HUD systems and/or facilities;
- (E) Use of other than full and open competition;
- (F) Complexity of the requirement; and
- (G) Any other issues.

(d) *Actions required in response to an ARC meeting.* Typically, the CO is charged with taking appropriate actions in response to feedback provided by the ARC. However, there are some situations where the ARC Chairperson may require specific actions be taken in response to feedback; if that is the case, the ARC Chairperson will identify the actions at the conclusion of the ARC presentation.

(e) The use of the ARC PowerPoint Presentation Template is mandatory template. As such, it can be found on OCPO's intranet site at:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2407.104 – General procedures.

2407.104-70 - Procurement Acquisition Lead Times.

(a) OCPO established a PALT calculator which computes the average time frame that an action should take to complete award based upon the specific acquisition strategy. Except as provided for

in paragraph (c), OCPO's goal is to award contract actions within the average PALT as determined by use of the PALT calculator located on OCPO's intranet site.

(b) *Status of planned actions.* Program and contracting offices can check the status of planned actions via the acquisition management system.

(c) *Exceptions to PALTs.* In certain cases, there may be a need to either expedite an action (*i.e.*, shorten the PALT; *e.g.*, for emergency or urgent needs) or extend the lead time (*i.e.*, lengthen the PALT; *e.g.*, unusually large and/or complex acquisitions). When an exception to the standard PALT is known when the ASAP is prepared, the exception will be identified in the ASAP. If the need for an exception is identified after approval of the ASAP (*e.g.*, in the development of the IAP), the responsible program office head will submit a written request for the exception to the ACPO responsible for the acquisition. The request must identify the action, the impact of the ACPO not approving the exception and which actions in the ASAP will be impacted by the change to the ASAP (*e.g.*, delaying other planned actions or milestones of planned actions to expedite an action).

2407.105 – Contents of written acquisition plans.

The IAP will contain all the information required by FAR 7.105 applicable to the specific planned action. The templates for Acquisition Plans are mandatory templates and as such, they are found in the Acquisition Templates (Approved and Mandatory) on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2407.105(b)(15)-70 - Government Furnished Property.

This section prescribes policies and procedures for providing Government property to contractors, contractors' management and use of Government property (including space in Government facilities), and reporting, redistributing, and disposing of contractor inventory.

2407.105(b)(15)-7001- Other definitions. For the purpose of this section:

(a) *Access* means:

With regard to a HUD facility, the physical entry into, and to the extent authorized, mobility within a HUD facility; and

With regard to a HUD system, the ability to obtain, view, read, modify, delete, and/or otherwise make use of information resources.

(b) *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.

(c) *HUD facility* means any building, including areas within a building, owned, leased, shared, occupied, or otherwise controlled by HUD.

(d) *HUD resources* means any equipment (including IT and telecommunications equipment) and personal property (e.g., office furniture) owned, leased, or shared by HUD.

2407.105(b)(15)-7002 – Policy.

It is HUD policy that contractors provide all facilities and equipment necessary to complete their contracts. However, in certain cases, program offices may have legitimate need for on-site contractor personnel and/or contractor access to HUD equipment. In such cases, the program office must justify the requirement and obtain approval for on-site contractor personnel and the provisioning of any HUD-owned equipment and HUD space to such personnel.

2407.105(b)(15)-7003 – Background.

(a) *Budget consciousness.* HUD operates in an environment of continually shrinking budgets, including the Salaries and Expense accounts used to pay for space and equipment, costs of obtaining contractor clearances, and the information technology fund used to pay for computers and peripherals. Historically, Program Offices have not been required to assess the costs of these services when determining the appropriateness of contractors working on-site and have not been required to reimburse these accounts for such costs. However, all Federal agencies have been instructed to reduce their footprint of space in Federal facilities. To accomplish this directive, HUD will first ensure that only contractors who must work on-site are doing so.

(b) *Inherently governmental function.* FAR Part 2 defines an inherently governmental function, in part, as a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgements in making decisions for the Government. Requiring on-site performance could be an indicator of contractors performing inherently governmental functions.

(c) *Personal Services.* FAR Section 37.104 discusses personal services contracts, in part, as follows:

“(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor’s personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies **shall not** award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C.3109) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee." (Emphasis added)

FAR Section 37.104(d) goes on to list several indicators that a contract might be for personal services. They include: (1) Performance on-site, (2) Principal tools and equipment furnished by the Government, (3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission, (4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel, (5) The need for the type of service provided can reasonably be expected to last beyond 1 year, and/or (6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees.

Contractor performance on-site should be kept to a minimum to reduce the risk of improper personal services contracts.

(d) *Government-Furnished Property (GFP)*. Allowing contractor employees to work on Federally-controlled property involves costs to the Department including space, equipment, furnishings, utilities, depreciation of assets, increased liabilities, additional security, and others. When GFP such as, computers, desks, and printers are provided to a contractor, the Department assumes responsibility for the contractor's failure to perform should the property fail, be inadequate, or be delivered late.

Pursuant to FAR Section 45.102, contractors are ordinarily required to furnish all property necessary to perform Government contracts. The Government will furnish GFP to contractors only when it is clearly demonstrated:

(1) To be in the Government's best interest, (2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal, (3) That providing the property does not substantially increase the Government's assumption of risk, and (4) That the Government requirements cannot otherwise be met.

Pursuant to FAR Section 45.104, generally, contractors are not held liable for loss of GFP under time and material contracts, labor hour contracts, cost-reimbursement contracts and fixed price contracts awarded on the basis of submission of certified cost or pricing data. This increases the risk to the Department in providing GFP.

2407.105(b)(15)-7004 - Acquisition planning.

Contracting Officers will ensure the topic of on-site performance and GFP are thoroughly covered during the Integrated Acquisition Team (IAT) meetings. When an acquisition is identified as

requiring on-site performance or GFP, the Contracting Officer will include the applicable representatives from the Chief Administrative Officer and the Chief Information Officer (CIO) in the IAT. The Contracting Officer and Contract Specialist will include these topics in their presentation to the Acquisition Review Council (ARC).

2407.105(b)(15)-7005 - Justifications for on-site contractor performance for new acquisitions. For each new acquisition requirement specifying contract employees working on-site, the General Deputy Assistant Secretary or equivalent will provide a memorandum to the Contracting Officer addressing the following:

- (a) The compelling reasons on-site contract employees are necessary to the performance of the contract and the mission of the Department. Other alternatives considered should be addressed.
- (b) An explanation of how the on-site contract employees will be physically separated from Departmental personnel. The explanation must include floor plans to depict the separation. The plan must also ensure contract employees do not receive more favorable treatment over HUD employees in terms of workstation location assignments and other work location amenities. HUD employees may not be displaced by contractors without bargaining union notification and negotiation, if applicable. Program Managers are responsible for ensuring compliance with union agreements regarding space.
- (c) A clear description of how work will be assigned to the contractor and how production will be monitored. The plan must clearly reflect the non-personal services nature of work assignments and that the contractor's employees are not considered to be employees of the Government. The plan must include examples of work assignment, forms and oversight logs, worksheets, etc.
- (d) A description of the GFP to be provided with a schedule and responsible official.
- (e) A description of how the GFP will be recovered after contract expiration or termination.
- (f) The estimated costs to HUD for the on-site performance, including provisioning of GFP.
- (g) The justification for on-site contractor performance can be found at the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2407.105(b)(15)-7006- Justifications for Government-furnished property.

For each new acquisition requirement that calls for provisioning of GFP by a support office when the contractor is not working on-site, the General Deputy Assistant Secretary will provide a memorandum to the Contracting Officer to address the following:

- (a) The compelling reasons why GFP is necessary to the performance of the contract and the mission of the Department.
- (b) A description of the GFP to be provided with a schedule and responsible official.

- (c) A description of how the GFP will be recovered after contract expiration or termination.
- (d) The estimated costs to HUD for the provisioning of the GFP.
- (e) The justification for government-furnished property can be found at the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2407.105(b)(15)-7007 - Concurrences for justifications.

The memorandum must be concurred upon by the Chief Administrative Officer (for space and peripherals), the CIO (for IT equipment/services), and the CPO, or their delegated representatives.

2407.105(b)(15)-7008 - Writing of requirements.

Contracting officers and specialists will work with program managers and technical staffs to ensure requirements are written with enough specificity to ensure personal services, including possible inherently governmental functions, are not being acquired or performed.

2407.105(b)(15)-7009 - Evaluation and comparison of prices.

While costs of performance on-site are not borne by the contractor, it is a cost to the Department and must be considered in the overall analysis. Each new acquisition involving contractors performing on-site will require prices for both on-site and off-site performance unless, by the type of work to be performed, it clearly is not feasible to work off site, *e.g.* on-site security services, on-site building maintenance, etc. The initial requirements analysis must include in the independent government cost estimate (IGCE) the estimated costs both off-site and on-site. After obtaining proposals/quotes, the price analysis will include a comparison of on-site versus off-site costs. In analyzing the total cost to the Government, the Contracting Officer will add the costs of HUD-provided overhead support to the on-site cost and/or GFP estimates to provide a meaningful cost to the government and permit informed decision-making. The template maintained on the OCPO web site will be updated as necessary to reflect the current costs to be used for analysis.

2407.105(b)(15)-7010 - Exercising options on existing contracts/orders.

Where existing contracts and orders are in place with on-site contractors which have not been through a review and approval process and remaining options are available to exercise, market research to determine the most advantageous method of acquisition (*e.g.* exercise the option, conduct a new procurement, or renegotiate the contract to move the personnel off site) must be conducted. If the determination is to exercise the option, the required approvals must still be obtained prior to exercising the option. The market research must be conducted sufficiently in advance to permit a new acquisition to be conducted if such a decision is made. Once approved for on-site performance, revision for option periods are not necessary unless the prior approval was specifically limited.

2407.105(b)(15)-7011 - Assisted acquisitions.

When a procurement action is conducted on behalf of the Agency by another Agency such as, GSA, if on-site performance is anticipated, the Program Office and HUD Contracting Officer must ensure the same procedures are followed. All Assisted Acquisitions will contain specific language requiring specific approvals noted above before initiating procurements. It is part of OCPO's overall strategic plan to allow assisted acquisitions, as deemed appropriate by the Chief Procurement Officer.

2407.105(b)(15)-7012 - Templates.

The templates referenced above are available on OCPO's Mandatory Template intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Subpart 2407.5 – Inherently Governmental Functions**2407.503 – Policy.**

Contracts will not be used for the performance of inherently governmental functions. Additional guidance concerning Inherently Government Functions can be found on the OCPO intranet site.

2407.503-70 – Responsibilities.

- (a) As part of acquisition planning, the CO will ensure the procurement includes no inherently governmental services.
- (b) The CO will ensure that the contract contains management controls necessary to ensure that the contractor does not perform any inherently governmental services and that HUD maintains control of its mission and operations.
- (c) The CO will ensure that the contract oversight is adequate to prevent confusion where the nature of the contract services presents a potential for inherently governmental services to be performed by contractor personal or government employees.
- (d) If determined that contractor performance of a function closely associated with an inherently governmental function is appropriate, the CO will document the decision and limit or guide a contractor's exercise of discretion and retain control of government operations by:
 - (1) Establishing in the contract specified ranges of acceptable decisions and/or conduct;
 - (2) Establishing in advance, a process for subjecting the contractor's discretionary decisions and conduct to meaningful oversight and, whenever necessary, final approval by and agency official; and

(3) Assigning a sufficient number of CORs to give special management attention to the contractor's activities to ensure that:

- (i) That they do not expand to include inherently governmental functions;
- (ii) Are not performed in ways not contemplated by the contract so as to become inherently governmental;
- (iii) Do not undermine the integrity of the government's decision-making process; and
- (iv) Do not interfere with Federal employee's performance of closely-associated inherently governmental functions.

(e) The CO will ensure that the level of oversight and management needed to retain government control of the contractor performance is maintained and precludes the transfer of inherently governmental responsibilities to the contractor that would result in unauthorized personal services as provided by FAR 37.104.

(f) The CO will ensure that a reasonable identification of contractors and contractor work products is made whenever there is a risk that Congress, the public, or other persons outside of the government might confuse contractor personnel or work products with government officials or work products, respectively.

Chapter 2408 – Required Sources of Supplies and Services

2408.000 – Scope of chapter.

This chapter prescribes policies and procedures for the acquisition of supplies and services from or through Government supply sources (see FAR Part 8 and HUDAR Part 2408 for related information).

Subchapter 2408.4 - Federal Supply Schedules

2408.405 – Ordering procedures for Federal Supply Schedules (FSS).

2408.405-1(c)(2)

For proposed orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (SAT), the CO will determine the appropriateness of limiting the number of sources to be considered and will document the order file with the circumstances and decision whenever restricting consideration. Form HUD 24013, *Limited Source Justification – Federal Supply Schedule Orders Exceeding the Simplified Acquisition Threshold*, is not required for orders exceeding the micro-purchase threshold, but not exceeding the SAT.

2408.405-571 - Policy.

(a) COs will set aside FSS acquisitions to the maximum extent possible utilizing FAR Part 19 as a guide for priority.

(b) *Federal Supply Schedules*. When deciding to use Federal Supply Schedules, COs are required to comply with the ordering procedures stipulated in FAR 8.405, listed in the following steps:

(1) Step One - Perform market research to ensure competition and to identify the proper Special Item Number that fits the requirement. Pursuant to FAR 8.405-1(d)(3)(i) and (ii), FAR 8.405-2(3)(iii)(A) and (B) and FAR 8.405-3(b)(ii)(B)(1) and (2), COs must perform sufficient market research to determine and ensure that three proposals will be received from FSS contractors that can fulfill the requirements.

(i) When conducting market research, the following GSA Web-based tools must be used to identify small businesses capable of meeting the requirement:

(A) GSA eLibrary - Through eLibrary, COs/CSs can search using key words to identify the appropriate GSA Schedule, Special Item Number (SIN), and awarded contractors. COs/CSs can also filter the list of contractors by specific socioeconomic category and view pricelists for contractor capability; and/or

(B) GSA Advantage! - Through GSA Advantage!, COs/CSs can locate all contractors who provide the product/service required, view the

socioeconomic status of each contractor and review the contract pricelists to help determine which firms are capable of performing the work.

(ii) If a search on eLibrary and GSA Advantage! does not result in possible small business sources, COs/CSs must consider issuing a Request for Information (RFI) on GSA's e-Buy to identify small businesses capable of meeting the requirement under the relevant SIN(s). COs/CSs may also determine whether the order is eligible for a set-aside (either for small business in general or for one of the socioeconomic categories listed in FAR 19.000(a)(3)).

(iii) To meet the competition requirements of FAR Subpart 8.4, under a small business set-aside, the CO/CS must anticipate receiving at least three proposals from businesses within the designated small business socioeconomic category. However, if less than three proposals from capable small business are anticipated, FSS can still be used as long as the CO documents the file with justification for limited competition in accordance with FAR 8.405-6. *Preparation Guide for Justification and Approval (J&A) for other than Full and Open Competition Under FAR parts 6, 8 and 13, Chapter 6 – FAR Part 8 Authorities For Using Limited Sources* provides further guidance on the required J&A may be accessed on the OCPO intranet site.

(iv) If market research reveals no small businesses on the Federal Supply Schedule, the CO will consider reviewing non-Schedule sources to see if other small business opportunities are available.

(2) Step Two - Incorporate clauses into the Request for Quotations (RFQs). It is the responsibility of the CO to ensure that the correct FAR and HUDAR clauses are incorporated, including those associated with set-asides in applicable circumstances.

(3) Step Three - Include a statement in the RFQ for an order or BPA that it will be set aside. The CO must include the following language, or something substantially similar for partial set-asides, in the RFQ:

“This is a notice that this order is a total set-aside for [insert either “small business concerns” or specify a subset of small business concern]. Only quotes submitted by [insert either “small business concerns” or specify a subset of a small business concern] will be accepted by the Government. Any quote that is submitted by a contractor that is not [insert either “a small business concern” or specify a subset of small business concern] will not be considered for award.”

If using e-Buy for a total set-aside, this statement will be added automatically to the set-aside RFQ posting.

(4) Step Four - Use the same competition rules as provided in FAR 8.405, except limit consideration only to small business. Use the following competition strategies for set-aside orders and BPAs under this authority:

Order/BPA Value	Strategy
At or below the Micro-Purchase Threshold	Distribute orders among contractors that meet the needs of the agency.
Over the Micro-Purchase Threshold, but at or under the SAT	CO Posts an RFQ on e-buy or considers reasonable available information about products and services by surveying at least 3 small businesses.
Exceeds SAT	CO posts an RFQ to e-Buy or sends quote out to multiple small businesses to receive quotes from at least 3 small businesses.

(5) Step Five - FAR 8.405 Ordering Procedures for Federal Supply Schedules. Ordering activities will use the ordering procedures of this section when placing an order or establishing a BPA for supplies or services. The procedures in this section apply to all schedules. In accordance with FAR 8.402, the FSS will be utilized as a simplified method of obtaining supplies and services and COs will not include complicated evaluation methods for evaluating quotations received. Whenever practicable, the lowest-priced technically acceptable method should be used. To ensure compliance with FAR 52.219-14, Limitations on Subcontracting, COs will include a requirement to obtain business proposals that include a breakdown of labor categories, labor rates, and hours to ensure the offeror is not proposing to exceed the subcontracting limitation. COs will also include a statement in the Request for Quotations that quotes that propose to exceed the subcontracting limitation will be ineligible to receive an award. To ensure HUD receives small business credit for the set-aside, COs will require offerors to certify their size status with their quote.

(6) Step Six – Requirements that are competed using GSA’s e-Buy system to distribute the request for quotations are considered to have met the competition requirements of FAR Subpart 8.4. GSA’s e-Buy system is one medium for providing for fair notice to all schedule contractors. If, however, the CO a) elects not to use e-Buy and b) fails to receive three proposals from capable contractors, the CO must either resolicit the requirement using e-Buy or prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified despite reasonable efforts to do so. The determination requirements for the CO’s *Determination not to use E-Buy under FAR Subpart 8.4* and the CO’s *Determination to proceed without three quotations in response to a request for quotations issued outside of E-Buy under FAR Subpart 8.4* are accessible at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(7) Step Seven – FAR 8.406-1 specifies the minimum information that must be included in all applicable orders. Orders must be awarded using GSA Form 300 when using the Federal Supply Schedules under FAR Subpart 8.4. Orders placed under Government-wide Acquisition Contracts (GWAC) must be awarded using the forms directed by the GWAC. Finally, if no direction is stipulated, COs will award using the locally generated format. The mandatory format for the *U. S. Department of Housing and Urban Development Task Order* can be accessed at the OCPO website under Indefinite-Delivery Contract Templates, through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(8) Step Eight - The CO is responsible for recording the action in the Federal Procurement Data System – Next Generation (FPDS-NG) of a set-aside at the order level. FPDS-NG has the ability to allow agencies to record the set-aside action at the order level.

2408.405-6 – Limiting sources.

2408.405-6(a)(2) – Posting.

The CO will prepare all required justifications for other than full and open competition using HUD Form 24013 and synopsise each action in accordance with FAR 5.301. (See *Preparation Guide for Justification and Approvals (J&As) for Other Than Full and Open Competition under FAR Parts 6, 8 and 13* for further guidance.)

2408.405-70 - Documenting order awards.

The CO or person authorized to place orders must complete a *Streamlined Price Negotiation Memorandum (PNM)* for each GSA acquisition task and delivery order exceeding the simplified acquisition threshold unless all elements of the order are pre-priced, and there is no negotiation or discussion of costs/price or other factors. The CO will utilize the PNM template located at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Chapter 2409 – Contractor Qualifications

2409.000 – Scope of chapter.

This chapter prescribes policies and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; contractor team arrangements; and organizational conflicts of interest (see FAR Part 9 and HUDAR Part 2409 for related information).

Subchapter 2409.1 – Responsible Prospective Contractors

2409.104 – Standards.

2409.104-3 – Application of standards.

(b) *Satisfactory past performance.* The CO will consult OSDBU when evaluating a proposed contractor's compliance with subcontract plans under recent contracts if the pending contract requires a subcontracting plan pursuant to FAR Subpart 19.7 and/or subcontracting performance is a significant evaluated factor for contract award. The OSDBU will assist the CO, as requested, in evaluating such compliance.

2409.105 – Procedures.

2409.105 – 2 - Determinations and documentation.

(c) The CO may use the *Responsibility Determination - Past Performance Assessment Chart* to document past performance for contractor responsibility determinations for actions where past performance is not a technical evaluation factor. The *Responsibility Determination - Past Performance Assessment Chart* may be accessed through the OCPO webpage at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Subchapter 2409.4 – Debarment, Suspension, and Ineligibility

2409.406 – Debarment.

2409.406-370 – Procedures.

(a) All referrals for debarment must be submitted to the agency suspending and debarring official through the responsible ACPO and the CPO. The Director of the Departmental Enforcement Center (DEC) is the suspending and debarring official. The DEC is located within the Office of the General Counsel. The mandatory format for referring a matter to the agency debarring and suspending official for consideration is found on the OCPO template intranet web site at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

To the extent practicable, the CO will provide all information specified in the format.

(b) Send three copies of each report, including enclosures, to the appropriate suspending and debarring official.

(c) If a referral lacks sufficient evidence of a cause for debarment, the suspending and debarring official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, *e.g.*, contracting activity, inspector general, or criminal investigative agency.

(d) Decision-making process.

(1) The agency suspending and debarring official may initiate the suspending and debarment process by issuing a notice of proposed debarment in accordance with 2 CFR §180.805 when the suspending and debarring official finds that the administrative record contains sufficient evidence of one or more of the causes for debarment stated in 2 CFR §180.800.

(i) The absence of a referral, or the absence of any information specified in the report format will not preclude the suspending and debarring official from making such a finding.

(ii) The signature of the suspending and debarring official on the notice of proposed debarment is sufficient evidence that the suspending and debarring official has made such a finding.

(2) The agency suspending and debarring official may consider factors listed in 2 CFR §180.860 in determining whether a participant should be debarred, and the length of that debarment.

2409.407 – Suspension.

2409.407-370 – Procedures.

(a) All referrals for suspension must be submitted to the agency suspending and debarring official through the responsible ACPO and the CPO. The Director of the Departmental Enforcement Center (DEC) is the suspending and debarring official. The DEC is located within the Office of the General Counsel. The mandatory format for referring a matter to the agency suspending and debarring official for consideration is found on the OCPO template intranet web site at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

To the extent practicable, the CO will provide all information specified in the format.

(b) If a referral lacks sufficient evidence of a cause for suspension, the suspending and debarring official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, *e.g.*, contracting activity, inspector general, or criminal investigative agency.

(c) Decision-making process.

(1) The agency suspending and debarring official may initiate the suspension process by issuing a notice of suspension in accordance with 2 CFR §180.715 when the suspending and debarring official finds that the administrative record contains sufficient evidence of one or more of the causes for suspension stated in 2 CFR §180.700.

(i) The absence of a referral, or the absence of any information specified in the report format will not preclude the suspending and debarring official from making such a finding.

(ii) The signature of the suspending and debarring official on the notice of suspension is sufficient evidence that the suspending and debarring official has made such a finding.

(2) In deciding whether to continue or terminate a suspension following a submission of matters in opposition, the agency suspending and debarring official uses the decision-making process stated in 2 CFR §180.750 and any agency-specific procedures that were provided to the contractor in advance of the decision.

Chapter 2410 – Market Research

2410.000 - Scope of chapter.

This chapter prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services, (see FAR Part 10.

2410.001 – Policy.

HUD's policy and procedures associated with conducting market research are contained in *Exploring the World of Market Research Guide* and FAR Part 10. Use of the templates under Market research is mandatory. The guide is located within the OCPO intranet site.

The templates can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2410.002 – Procedures.

(a) Market research is required for new requirements and prior to exercising options. COs will ensure that legitimate needs are identified and tradeoffs evaluated and defined sufficiently to conduct market research. The Integrated Acquisition Team will utilize all available resources to ensure that the Performance Work Statement, sources of supply, competition, small business utilization and other aspects of acquisition planning are realistically and timely addressed. The tools available to the IAT are identified and described in *Exploring the World of Market Research Guide*. Mandatory templates associated with documenting market research are accessible at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(e) The Program Office will document market research and submit the approved Market Research Template Report with the requisition. The CO will ensure that the market research results are included in the contract file and maintained in the acquisition management system. The results will also be included in the individual acquisition plan.

Chapter 2411 – Describing Agency Needs

2411.000 - Scope of chapter.

This chapter prescribes policies and procedures for describing agency acquisition needs (see FAR Part 11 and HUDAR Part 11 for related information).

2411.002 – Policy.

2411.002-70 – Work statements.

The services to be provided under a contract are described in a performance work statement (PWS), statement of objectives (SOO) or statement of work (SOW). (Note: Unless specifically stated otherwise, the term work statement refers generically to PWS, SOO and SOW).

- (a) The program office will be responsible for preparing the work statement. Unless exempted by the applicable Assistant CPO, all requirements over the simplified acquisition threshold will be developed utilizing the *Acquisition Requirement Roadmap Tool* (ARRT).
- (b) The Integrated Acquisition Team will utilize all available resources to ensure that the work statement, sources of supply, competition, small business utilization and other aspects of acquisition planning are realistically and timely addressed.
- (c) Subject to resource limitations, the Acquisition Liaison Unit (ALU) is available upon request by the CO or program customer to provide assistance with defining program requirements. The ALU serves primarily to effectively collaborate with program clients and acquisition team members. They apply their expert knowledge of federal acquisition regulations and policy to provide program customer personnel assistance in the preparation of acquisition documents, *e.g.*, conducting and documenting market research, writing work statements, developing Quality Assurance Surveillance Plans and preparing Independent Government Cost Estimates. They assist in determining acquisition strategies and objectives; analyzing requirements, recommending acquisition methods, type of contract, and extent of competition.

2411.002-71 - Requisition submission.

- (a) Prior to initiating an acquisition, the Integrated Acquisition Team (IAT) meets, discusses and develops the requisition package which includes identifying the required documents critical to ensure mission, business and acquisition outcomes are attained. At a minimum, for each requisition submitted in the acquisition management system, the Program Office must submit the documents identified for an actionable requisition listed within the Requirements Matrix. The Requirements Matrix is located on the OCPO intranet site.
- (b) Because the requisition release date within the acquisition management system is the start date for the purposes of calculating PALT, failure to complete the requisition package within the timelines as described herein will result in falsely elevated PALT measurements.

- (c) If all the required mandatory documents needed to complete the package are not in the requisition package, the CO will send an email to the COR that identifies the missing document(s) and allow five business days for the Program Office to submit the missing documents.
- (d) If the Program Office fails to submit the remaining documents within five business days, the requisition will be cancelled, and the program office will not be allowed to resubmit the requisition until all the required documents for the complete package are available for submission.
- (e) If the non-mandatory documents are not submitted within 30 days of requisition submission, the requisition will be cancelled.
- (f) The CO will notify the responsible ACPO when processing an amendment to return a requisition.
- (g) The actionable requisition will be used to assess timeliness of the submission.

Chapter 2412 – Acquisition of Commercial Items

2412.000 - Scope of chapter.

This chapter prescribes policies, standards, and procedures pertaining to the acquisition of commercial items (see FAR Part 12 for related information).

Subchapter 2412.1 – Acquisition of Commercial Items – General

2412.102 – Applicability.

2412.102-70 - Determination of a commercial item.

(a) Determining whether an item or service is of a commercial nature requires examining many variables. The determination is not based on one factor alone, but a combination of factors that must be considered and relies heavily on thorough market research. Examples of determination decisions are:

(i) Commercial - Acquiring debt collection services.

(A) Market research. During your market research you find that the service is offered in the commercial marketplace and there are published price lists readily available. However, the requirement includes specific monthly reports that are different than those required by a commercial customer.

(B) Determination: Simply because the government includes requirements for monthly reports that may deviate slightly from the contractor's commercial practice, the basic or majority of the service required (debt collection) is still considered commercial. This is an example of a minor modification of a type not customarily available in the commercial marketplace, made to meet Federal Government requirements. The CO, based upon market research, would consider this to be commercial in nature. In addition, in accordance with 2412.302 – 70 below, a waiver would be required to be approved by the DCPO for the non-commercial requirement for the government monthly report.

(ii) Non-commercial - Acquiring Government-unique GNMA housing financial investment services.

(A) Market research: While performing Market Research you find several firms that can provide commercial financial investment services. You also find many firms that provide commercial housing investment services. When examining labor categories for the commercial services and the labor categories provided in the Independent Government Estimate, you notice that the categories of labor are very similar (*i.e.*, investment analyst, program manager or financial advisor). However,

you do not find any firms that offer investment of GNMA market securities in the commercial marketplace.

(B) Determination: A commercial item is not defined by whether the labor categories can be found in the commercial marketplace. Simply because the labor categories are titled similar to commercial categories (such as investment analyst, or program manager, or financial advisor) a determination that these services are commercial cannot be made. The basic service, Government-unique GNMA housing financial investment services, cannot be considered commercial based upon the labor categories alone.

(b) It is important that you consider all the attributes when determining commerciality. As such, a Commercial Item Determination Checklist was developed and is provided on the OCPO Acquisition Templates webpage and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Subchapter 2412.3 – Solicitation Provisions and Contract Clauses for the Acquisition of Commercial items

2412.301 - Solicitation provisions and contract clauses for the acquisition of commercial items.

2412.301-70 - Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) The DCPO is the approval authority within HUD for all requests for waivers that support the need to include terms, conditions, provisions or clauses that are inconsistent with customary commercial practice.

(b) FAR Part 12 acquisitions are to be streamlined using the clauses associated with commercial items and are not to include non-commercial type clauses. As an example, inspection and acceptance is covered by FAR 52.212-4(a), Inspection/Acceptance and represents commercial practices. However, to include the clause at FAR 52.246-4, Fixed Price Inspection of Services – Fixed Price, is inappropriate when utilizing FAR Part 12.

2412.302 - Tailoring of provisions and clauses for the acquisition of commercial items.

2412.302–70 – Tailoring of provisions and clauses for the acquisition of commercial items.

(a) The DCPO is the approval authority within HUD for all requests for waivers that support the need to tailor FAR Part 12 solicitations and contracts to include terms, conditions, provisions, or clauses that are inconsistent with customary commercial practice.

(b) *Tailoring FAR Part 12 clauses and provisions.* FAR Provision, 52.212-1, Instructions to Offerors-Commercial Items, may be tailored to meet the needs of each unique solicitation requirement. As an example, FAR Provision 52.212-1(c), Period for acceptance of offers, states

that the offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation. After considering the proposal evaluation time of acquisitions for similar services, the CO may determine that 30 days is not an adequate period of time for an offer to agree to hold the prices in its offer firm so that a contract can be awarded based on current, firm offers. In that instance the CO must specify, in an addendum to the solicitation, that the period of time that the offer must agree to hold the prices in its offer firm is 60 or 90 days from the date specified for receipt of offers.

(c) *Clauses and provisions that may not be tailored.* FAR 12.302 is specific concerning which paragraphs of clause 52.212-4, Contract Terms and Conditions – Commercial Items, will not be tailored. As an example of a clause or provision may not be tailored is the disputes clause. If a contractor includes a disputes provision which states that contract disputes are not subject to 41 U.S.C. Chapter 71, Contract Disputes or states that all work stops in the event of a dispute, the CO must reject or negotiate the proposal because the solicitation contains FAR 52.212-4, Contract Terms and Conditions-Commercial Items, (d) Disputes. This is one of six paragraphs of the clause which shall not be tailored in accordance with FAR 12.302(b), Tailoring of provisions and clauses for the acquisition of commercial items. As such, the CO will not request a waiver from the DCPO.

(d) *Tailoring inconsistent with customary commercial practice.* FAR 12.302(c) reads, “The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures”. If the CO determines that the Government has a need to include a term, condition, clause or provision, in a solicitation or contract that is inconsistent with customary commercial practice, *however seemingly minor*, a waiver must be granted by the DCPO prior to its inclusion.

Chapter 2413 – Simplified Acquisition Procedures

2413.000 – Scope of chapter.

This chapter prescribes policies and procedures for the acquisition of supplies and services, the aggregate amount of which does not exceed the simplified acquisition threshold (SAT) (see FAR Part 13 and HUDAR Part 2413 for related information).

Subchapter 2413.1 – Procedures

2413.101 – General.

2413.101-70 – Acquisition of training.

(a) This policy applies only to the acquisition of commercially available off-the-shelf training (COTS). Training that must be prepared or significantly customized for HUD is generally considered an acquisition of services, and not COTS training.

(b) The total cost for each COTS training (including travel costs, if applicable) must be determined on a department-wide basis and no funds may be obligated for the event without obtaining all approvals required by HUD policy based on this total cost.

(c) Acquisition of COTS training includes the payment of registration fees for a conference which HUD's Chief Learning Officer has designated as a training conference.

(d) The Federal Travel Regulations (FTR) also allow a travel authorization to be used to obligate the Government to reimburse a traveler for using their Government-issued travel charge card to pay for a conference registration fee as a travel-related cost, in lieu of processing the obligation via a SF-182.

(e) Processing COTS training requests at or below the Micro Purchase Threshold (MPT) (currently set at \$3,500):

(1) Requirements for COTS training at or below the MPT will be processed through the use of the Government Purchase Card (GPC). The GPC transaction must be accompanied by a SF-182 or other documentation which provides the following information:

(i) Description of the course objectives, course title and course number (if known);

(ii) A web screen shot or commercial catalog that identifies at a minimum one source for the commercially-available training to reflect the price of the one vendor is fair and reasonable. Additional market research for other sources is required only if the price of the one source cannot be determined reasonable by the GPC cardholder. The price(s) discovered during market research will be retained in the supporting documentation;

(iii) Dates for the training;

- (iv) Training site; and
- (v) Point of contact for the training.

Note: GPC cardholders and Approving Officials (AOs) are to process GPC transactions in accordance with HUD's GPC Guide and reconcile the obligations for GPC transactions by the end of the designated monthly cycle.

(f) Processing COTS training requests over the MPT and up to and including \$25,000:

(1) COTS training requests over the MPT and up to and including \$25,000 may be processed and acquired by training coordinators within HUD program offices by completing the SF-182 and the manual obligation document and submitting it to Bureau of Fiscal Services (BFS) for manual obligation. The manual obligation document may be found at URL:

https://arc.publicdebt.treas.gov/fs/fscust_hud_fm_forms.htm

- Enter in the customer web page username and password;
- Click on the Accounts Payable 'green bar';
- The miscellaneous Obligation form is the second link in that section.

(2) Each SF-182 must be signed by all the officials identified in "Section D. Approvals," the Budget Officer in "Section E. Approvals/Concurrence" and also initialed and dated by the program office's trusted agent in "Section E. Approvals/Concurrence." The program office's trusted agent is the employee designated by the program office's General Deputy Assistant Secretary (GDAS). They must have the ability to validate that COTS training is what is being acquired via the SF-182. The trusted agent performs suitable oversight to ensure the SF-182 is in compliance with HUD's policies including, but not limited to this AI. To enable the BFS ARC to identify who the invoice approver is for each transaction, the person whose name is in Section E will also be the invoice approver in the Invoice Processing Platform (IPP). Program offices must ensure the individual has requisite access to the IPP.

(3) Program offices must have adequate internal controls in place to ensure no individual has the ability to perform all the steps (*e.g.* initiate, approve, award, and pay invoices) on a single transaction.

(4) At a minimum, the information/documentation described in 2413.101-70(e) above will be retained with each SF-182.

(g) Processing COTS training requests above \$25,000 but not exceeding the SAT (currently set at \$150,000).

(1) Requirements for COTS training requests above \$25,000 but not exceeding the SAT must be acquired through a contract action subject to FAR requirements. The requirement is to be

submitted as a requisition through the acquisition management system to OCPO for a CO to process. FAR Part 13 (or FAR Subpart 8.4, if using the Federal Supply Schedules) and associated references apply to these acquisitions. The requisition must include the following supporting documentation:

(i) Description of the course objectives, course title, course number (if known) or Statement of Work;

(ii) Market research which identifies a minimum of three small business sources for the training using the Simplified Acquisition Market Research Template found on the following URL:

[http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition templates/acq_templates](http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition%20templates/acq_templates)

Market research documents submitted as part of the requisition package must be labelled as market research and not as quotes. FAR 13.003(b)(1) states, in part, that acquisitions of supplies or services that have an anticipated dollar value exceeding the MPT but not exceeding the SAT are reserved exclusively for small business concerns and shall be set aside. If, after thorough market research has been performed it is found that two or more small business concerns cannot provide the required training, the small business set a-side must be dissolved. The requisition must include adequate justification to enable the CO to make the determination to dissolve the small business set-aside;

(iii) Independent Government Cost Estimate (I GCE) (this normally will be based upon established catalog or other pricing);

(iv) Justification for a sole source determination under simplified acquisitions with sufficient information for the CO to complete and confidently sign the Sole Source Determination for Simplified Acquisitions template found on URL:

[http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition templates/acq_templates](http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition%20templates/acq_templates)

Generally, a justification is required when three sources, large businesses or small businesses, for the training cannot be identified or the services required are of such unique nature that only one source can fulfill the requirement. The determination must explain why the identified course is the only course that meets the training objectives and why the recommended vendor(s) is the only vendor that can provide the unique training.

(v) Contracting Officer Representative (COR) Nomination Letter;

(vi) Federal Acquisition Certification (FAC) – COR certification;

(vii) List of Government Furnished Property, Equipment or Information, if applicable;

(viii) Performance period or when the training is requested or required; and

(ix) Place of performance.

(2) Requests for training exceeding the SAT must comply with all supporting documentation requests as identified on the Requirements Matrix posted to OCPO's intranet site.

(h) Dissemination of training procurement actions. Procurement actions for COTS training expected to exceed \$25,000 must be synopsisized in accordance with FAR Part 13 unless it is being acquired using GSA schedules, in which case dissemination is in accordance with FAR Part 8.

(i) Utilizing streamlined oral solicitation procedures for acquiring training under FAR Part 13.

(1) COs are encouraged to orally solicit training requirements up to the SAT in accordance with FAR Part 13. If notice is required under FAR Subpart 5.101, oral solicitations may not be conducted.

(2) COs shall document the results of their oral solicitations in accordance with the template entitled Simplified Acquisition Documentation Record for Oral Solicitations found on OCPO's intranet site at URL:

<http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition templates/acct templates>

(3) For COTS training requests above \$25,000 but not exceeding the SAT, COs shall keep documentation to a minimum. The CO will establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of identifying the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(4) If an oral solicitation is used, the CO will ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization. The CO will disclose to the contractor that the TIN may be used by the Government to collect and report any delinquent amounts arising out of the contractor's relationship with the Government.

(5) The CO will make award through the acquisition management system which will report the award information to the Federal Procurement Data System (FPDS). The CO must make a determination that the proposed price is fair and reasonable either as a result of competition, in comparison to the Independent Government Cost Estimate (IGCE), commercial price lists, catalogs or advertisements, or another reasonable basis.

(j) Streamlined acquisition of training under Federal Supply Schedules.

(1) FAR 8.405-1 allows COs to consider reasonably available information about the supply or service offered under Multiple Award Schedule contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors.

(2) When electing to use GSA Schedules for the acquisition of training, COs are strongly encouraged to utilize GSA Advantage! and catalogs or pricelists as a first preference, and should those avenues not fulfill the requirement, then issue a request for quotations.

(3) Should circumstances exist that necessitate restricting consideration to fewer than three schedule contractors, the CO will document the rationale for limiting sources in accordance with FAR 8.405-6(a).

(k) Documenting awards of training requirements when using written Requests for Quotation. COs will document the results of written quotations in accordance with the template entitled Simplified Acquisition Documentation Record for Written Request for Quotations found on OCPO's intranet site at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(l) Processing of COTS training to be provided by another Federal agency.

Where the desired COTS training is being provided by another federal agency (*e.g.* OPM), the training may be processed and acquired by HUD program offices by completing the SF-182 and the manual obligation document and submitting it to BFS for manual obligation, as reflected in paragraph 2413.101-70(f) above. Unless required by the servicing agency, an Interagency Agreement (IAA) is not required. Interagency training may be acquired using this method regardless of dollar value and may exceed the \$25,000 threshold noted in 2413.101-70(f) above. However, if the servicing agency requires an IAA, it must be processed through normal procurement processes. For training under the MPT, if an agency accepts the GPC, then that should be used to pay for the training. Otherwise, payment to other agencies will normally be made via the Intra-Governmental Payment and Collection (IPAC) process.

2413.101-71 - Non-COTS training services. Non-COTS training services and other actions such as conferences that do not provide training credits must follow standard FAR-based procurement processes. Note: Detailed information on the Departmental approval process and dollar thresholds for program Office OCPO and Deputy Secretary authorizations of conferences, including related guidance with respect to procurements, food and drink, and ethics is located in *HUD'S Conference, Travel & Training Guidance v. 2.0* policy documents.

2413.101-72 - Using the GPC as payment for training acquisitions exceeding MPT.

(a) In certain circumstances, the CPO may authorize an increase in a GPC cardholder's purchase threshold so that the GPC may be used as a payment instrument (only) for an acquisition that exceeds the MPT. In these cases, the GPC's threshold may not be raised and the GPC may not be provided to the vendor until such time as a contract (task order, purchase order, etc.) is effectuated between the OCPO CO and the contractor.

(b) These transactions require the coordination between the program office, the GPC cardholder, HUD's GPC Agency Program Coordinator and OCPO to ensure that proper procedures are followed. Requests to increase a GPC cardholder's purchase threshold for a single transaction must be submitted to the mailbox identified as "HUD Purchase Card Program" in the email directory with a copy to the CO after the requisition has been submitted to OCPO. The request must identify

the GPC cardholder, amount of the transaction, the vendor, the reason for the increase, name of the training course, and dates of the training course. Any request for an increase in a GPC cardholder's purchase threshold must be submitted in sufficient time for the increase to be processed after the contract has been issued and before performance occurs. COs will process training purchase orders in acquisition management system, where the GPC is used as the payment method, in accordance with the following steps:

Step 1. Create a Purchase Order.

Step 2. On the *Main/Additional* information page, select **Yes** in the **6N – Purchase Card Payment Method** field.

Step 3. Add a new Line Item.

Step 4. In the Line Item's **Description** field, enter a description of the training and state that it was paid for by a government purchase card, and add the appropriate code associated with whether the action is inherently governmental.

Step 5. Click the **Requisition Number** lookup button to associate the line item to the appropriate requisition. Do NOT pull in any funding.

Step 6. Do NOT add a **Ship To** or **Funding** to this line item. This information is not required, because it is funded by a government purchase card.

(c) After the GPC threshold has been raised, the GPC card holder will process the training transaction in CitiDirect as described in the GPC Program Policy Guide.

2413.101-73 - Splitting training requirements prohibited.

Regardless of the acquisition method (GPC or SAT), Program Offices and COs are prohibited from breaking down (splitting) requirements aggregating more than the simplified acquisition threshold or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

2413.101-74 – Templates used when acquiring training and for other simplified acquisitions.

The following templates are located on the OCPO's Mandatory Template web site and are to be used in documenting market research, oral solicitations, written quotes, and other processes associated with this subchapter.

- *Market Research Report — Simplified Acquisitions*
- *Simplified Acquisition Documentation Record for Oral Solicitations*
- *Simplified Acquisition Documentation Record for Written Request for Quotations*

2413.101-75 – Exceptions to the policy for acquiring training.

The Chief Procurement Officer or designee must approve exceptions to the policy for acquiring training. Requests for exceptions must be written and include the justification.

2413.106 – Soliciting completion, evaluation of quotations or offers, award and documentation.

2413.106-3 – Award and documentation.

(b) *File documentation and retention.* The *Simplified Acquisition File Checklist* is accessible on the OCPO internet website.

(3) *Special situations.* The CO will document the situations listed in FAR 13.106-3(b)(3)(i) and (ii) via a memorandum to the purchase file signed by the CO. This documentation will be maintained in the acquisition management system.

Subchapter 2413.3 – Simplified Acquisition Methods

2413.301 – Governmentwide commercial purchase card.

(a) All Governmentwide commercial purchase card (GPC) holders receive a Delegation of Procurement Authority (DPA) from the Agency Program Coordinator prior to obligating the government for acquisitions up to the micro-purchase threshold. Cardholders also must complete training in the use of the card and simplified acquisition methods and procedures prior to being issued a DPA. Any acquisition exceeding the micro-purchase threshold must be accompanied by a purchase, task or delivery order signed by an appropriately warranted CO.

(b) The Chief Procurement Officer is responsible for approving cardholders who will use the GPC as a payment method for acquisitions exceeding the micro-purchase threshold. HUD's procedures for use and control of the GPC for micro-purchases and as a payment method for acquisitions exceeding the micro-purchase threshold are contained in the *HUD Government Purchase Card Program Guide* located on the OCPO intranet site.

(c) The administrative procedures specific to the GPC program located in the GPC Program Policy Guide (e.g., logging, reconciling of transactions, and disputing transactions) apply to all transactions where the GPC is used.

Subchapter 2413.5 – Simplified Acquisition Procedures for Certain Commercial Items

2413.501 – Special documentation requirements.

2413.501-70

Justifications associated with this section of the FAR must be prepared and processed in accordance with the *Preparation Guide for Justification and Approvals (J&As) for Other Than Full and Open Competition under FAR Parts 6, 8 and 13*, located on the OCPO intranet site. The

mandatory template associated with documenting the justification of a sole source or brand name for Certain Commercial Items is available on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Chapter 2414 – Sealed Bidding [RESERVED]

Chapter 2415 – Contracting by Negotiation

2415.000 - Scope of the chapter.

This chapter prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions (see FAR Part 15 and HUDAR Part 2415 for related information).

Subchapter 2415.1 - Source Selection Processes and Techniques

2415.101 – Best value continuum.

2415.101-70 - Source selection method.

The CO, in consultation with the Program Office, will determine the appropriate source selection method for each proposed contract. The source selection method must be part of the acquisition strategy and must be included in the individual acquisition plan (see Handbook 2407.105).

2415.101-170 – Best value tradeoff source selection process.

To standardize the solicitation, evaluation and award procedures and techniques while utilizing the best value tradeoff evaluation process to evaluate contractor proposals and document award decisions, OCPO developed mandatory templates for the use by the CO/CS. Any revisions to the language within the templates must be approved by the DCPO. The mandatory templates for best value *Tradeoff source selection process* may be accessed on the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2415.101-270 – Best value lowest price technically acceptable (LPTA) source selection process.

To standardize the solicitation, evaluation and award procedures and techniques while utilizing the best value LPTA evaluation process to evaluate contractor proposals and document award decisions, OCPO developed mandatory templates for the use by the CO/CS. Any revisions to the language within the templates must be approved by the Deputy CPO. The mandatory templates for *LPTA source selection process* may be accessed on the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Subchapter 2415.2 - Solicitation and Receipt of Proposals and Information

2415.201 - Exchanges with industry before receipt of proposals.

2415.201-70 – Pre-proposal exchanges.

(a) The purpose of exchanging information before receipt of proposals is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhance the Government's ability to obtain quality supplies and services, including construction, at reasonable prices.

(b) Three common methods as described in FAR 15.201(c), for interacting directly with potential offerors are:

(1) Industry Days. Industry Days are events held early in the requirements definition phase to help the Government define its requirements. Industry days are held in a group setting led by the CO. It offers opportunities for Industry to present information about what technology or capabilities or goods or services are available in the market place to meet the requirement described by the Government. HUD employees must be careful not to disclose acquisition sensitive information to the companies giving these presentations. If any such information is disclosed to one vendor, then HUD must disclose that information to all potential vendors (public). Remember, FAR 15.201(f) states, "When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage.";

(2) Pre-solicitation conferences. Pre-solicitation conferences are a primary method of conducting market research. These conferences are held in group settings and one-on-one meetings are not prohibited as long as the contracting officer is present and guides the discussion; and

(3) Pre-proposal conferences. A pre-proposal conference is a method of obtaining and answering questions from potential offerors after a solicitation has been released. This is a formal presentation and discussion forum that the CO closely manages. Any material, including presentation slides and Q&As are published along with any solicitation amendments that are outcomes of the conference. No one-on-one opportunities are permitted and no conversations between program personnel and potential vendors are permitted except during the technical presentation phase of the conference.

(c) As described in FAR 15.201(c), COs/CSs are encouraged to utilize information exchanges with industry, as appropriate. The three methods above are considered to be best practices and they are designed to achieve different outcomes. The initial notice must be clear as to the kind of conference planned to clearly manage expectations of all attendees. All information exchanges must be consistent with procurement integrity requirements. For example, an industry day may include an opportunity for one-on-one meetings with program staff, but a pre-proposal conference will not.

(d) *Exploring the World of Market Research Guide* provides additional information concerning interacting directly with potential offerors before receipt of proposals. This guide can also be accessed at the OCPO intranet site.

2415.203 - Requests for proposals (RFPs).**2415.203-70 - Preparation and review of RFPs.**

(a) While a contract specialist (CS) may prepare most of the work products, the CO is responsible for the content and quality of the RFP. The CO will seek the assistance of program and technical personnel, as needed, to ensure that all programmatic and technical requirements are adequately addressed.

(b) The program office is responsible for writing the work statement and developing the technical source selection plan, including identifying and appropriately customizing the technical source selection factors (in accordance with Handbook 2415.304) and related proposal instructions.

(c) The CO will provide the RFP to key members of the IAT (COR, PM) for their review, input, and concurrence. As requested by the program office, or deemed necessary by the CO, the CO may provide the RFP to the Technical Evaluation Panel (TEP) for review. The IAT and program office reviews must be completed, and any resulting changes made to the RFP before obtaining the internal OCPO and legal reviews required by Handbook 2401.70. The Solicitation Review Checklist and the Solicitation Review Feedback Format must be used to document the reconciliation of the internal review comments. These templates can be accessed at the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) *Solicitation scrubs*. Beyond the review conducted by the IAT, the CO will ensure that all solicitations with an anticipated award value expected to exceed \$10 million receive a thorough, formal, documented, team-executed review to ensure that the solicitation is in compliance with the Federal Acquisition Regulation, HUD Acquisition Regulations, policy and procedures. Members of this review team include the Contract Specialist, selected peers with sufficient experience to support the team, team lead, CO and the supervisor of the procurement unit. The Solicitation Review Checklist and the Solicitation Review Feedback Format must be used to document effective performance of the solicitation scrub. These documents may be accessed on OCPO's intranet site for mandatory templates through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(e) All review comments and discussions related to solicitation reviews will be maintained in the official procurement file in the acquisition management system.

2415.207 - Handling proposals and information.

The CO will comply with the requirements for disclosure, protection, and marking of proprietary and source selection information set forth in FAR Subpart 3.1.

2415.207-70 - Agency Ethics Officer review for financial conflicts of interest.

(a) COs will ensure that all members of the TEP and the Source Selection Authority (SSA) have completed the financial disclosure certifications in accordance with Handbook 2403.101-3(b). Disclosure is made on one of the following forms:

- (1) SF-278, “Public Financial Disclosure Report”, filed by Presidential Appointees confirmed by the Senate, Senior Executive Service (SES), and Schedule C employees; or
- (2) OGE 450, “Confidential Financial Disclosure Report”.

(b) COs will ensure that the Agency Ethics Officer (AEO) has reviewed the certification and financial disclosure forms of each TEP member and the SSA (See Handbook 2403.101-70(c)(3)(ii), Non-disclosure requirements – source selection and contractor proposal information). The AEO will notify the CO by email or other written means confirming the status of each of the TEP members. No proposal information will be provided to the TEP or the SSA prior to receiving written confirmation from the AEO that no apparent financial conflicts of interest have been identified. Clearance documentation received from the AEO will be maintained with the official procurement file in the acquisition management system.

(c) Wholesale proposal information is not to be shared with TEP Advisors. Excerpts from proposals may be provided to TEP Advisors in such form as to enable advice to be provided in an informed manner but to prevent disclosure of the proposing firm. Only sufficient information to respond to the issue shall be shared with the TEP Advisor. The TEP Chair shall consult the CO should they have questions about what they can or cannot release to the TEP Advisor. As such, TEP Advisors are not required to complete the SF 278 or OGE 450. However, they must complete a *Financial Conflict of Interest Certification for TEP Advisors* that states that upon becoming aware of the proposing firms, they must immediately stop advising the TEP, notify the CO and comply with the requirements of financial disclosure before continuing their advisory duties. This form can be accessed on the OCPO intranet site at Acquisition Templates (Approved and Mandatory) through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Subchapter 2415.3 - Source Selection

2415.303 - Responsibilities.

2415.303-70 - General responsibilities for source selection process.

(a) General responsibilities for best value tradeoff source selection process. The following identifies the general responsibilities of primary participants for the best value tradeoff source selection process.

- (1) *The Source Selection Authority (SSA)* as delegated in accordance with HUDAR 2415.303(a)(1) and (2), must have sufficient knowledge of program requirements, budgetary parameters and the acquisition process to independently determine the best value for the Agency. The SSA is responsible for:

- (i) Appointing the TEP and any consultants or advisors to the TEP;

(ii) Reviewing and approving the SSP;

(iii) Reviewing the TEP report and any information provided by the CO; and

(vi) Providing a written selection decision that clearly delineates the rationale for the selection decision.

(2) *The CO* is responsible for:

(i) Overall management of the entire solicitation, evaluation, and award process;

(ii) Providing the TEP briefing utilizing the mandatory TEP briefing slide deck located on the OCPO webpage in the mandatory templates page, training the TEP members on their roles and responsibilities while participating in the TEP and ensuring that all members of the TEP are aware of the solicitation requirements, evaluation factor and TEP requirements.

(iii) Instructing the TEP as to what information may be released to TEP Advisors;

(iv) Ensuring that price or cost analysis (as applicable) is conducted by a party/team outside of the TEP and adequately documented;

(v) Determining if discussions are necessary and making any necessary competitive range determinations;

(vi) Ensuring all appropriate stakeholders collaborate throughout the evaluation process to facilitate ongoing discussion, and ensure the TEP report is submitted timely and accurately;

(vii) In collaboration with the TEP and the price analyst (if applicable), drafting and documenting a recommended tradeoff decision and providing it to the SSA with the technical and price analyses reports;

(viii) Ensuring the SSA completely and satisfactorily documents the final source selection tradeoff decision; and

(ix) Performing investigations of Procurement Integrity Act violations.

(x) If the TEP Chairperson is a contractor, the CO is also responsible for:

(A) Designating any additional committees and advisors needed to assist in the evaluation.

(B) If a TEP member's failure to perform his/her TEP duties hinders the evaluation process, the CO is responsible for taking any necessary remedial action to ensure that the TEP completes its evaluation by the established completion date (*e.g.*, request the Source Selection Authority (SSA) or cognizant program office head to require the member's

attendance or designate a replacement, dismiss the member and inform his/her supervisor of the reasons for his/her dismissal, etc.).

(3) *The Contract Specialist* is responsible for:

- (i) Coordinating with the TEP the dates and times for meetings to perform evaluations and attending such meetings to the extent possible;
- (ii) Taking all necessary precautions to protect the confidentiality of the evaluation process and safeguarding TEP records, proposals and other information bearing on the evaluation;
- (iii) Coordinating with the TEP and Legal Advisor to ensure all required disclosures and reviews are completed prior to forwarding proposals to the TEP Chairperson;
- (iv) Receiving and accounting for all proposals, performing preliminary reviews to ensure all required documentation is submitted, ensuring technical proposals are separated from price proposals, forwarding technical proposals and level of effort and labor categories to the TEP Chairperson, and providing price information to the TEP at the appropriate stage of the evaluation so that the CO and TEP can collaboratively perform and document the tradeoff recommendation to the SSA;
- (v) Working with the CO and other advisors to thoroughly analyze the proposed level of effort and labor categories to ensure that they are consistent with the proposed technical approach; and
- (vi) Preparing documents for the contract file throughout the proceedings and ensuring all documentation of the evaluations is recovered from the TEP and included in the official procurement file and maintained in the contract management system.

(4) *The Office of General Counsel (OGC) advisor* is responsible for:

- (i) Reviewing and concurring with the SSP;
- (ii) Providing the TEP with an Ethics briefing;
- (iii) Providing collaborative assistance and guidance prior to submission of official reports;
- (iv) Providing ongoing legal assistance and advice as needed, including reviews of documents submitted to ensure there are no conflicts of interest; and
- (v) Reviewing the TEP report(s) and source selection decision and providing comments and assistance as necessary to resolve outstanding issues.

(5) *The TEP Chairperson*.

(i) If the Technical Evaluation Panel Chairperson is a Federal employee, the employee is designated as responsible for the following procedural and administrative responsibilities:

(A) Scheduling and conducting TEP meetings;

(B) Designating any additional committees and advisors needed to assist in the evaluation;

(C) Ensuring adequate participation of members. The Chairperson has discretion in determining if full TEP attendance is needed to hold meetings, conduct TEP business, etc. The Chairperson will take reasonable steps to ensure that at least a majority of the voting members are present. If a TEP member's failure to perform TEP duties hinders the evaluation process, the Chairperson is responsible for taking any necessary remedial action to ensure that the TEP completes its evaluation by the established completion date (*e.g.*, request the SSA) or cognizant program office head to require the member's attendance or designate a replacement, dismiss the member and inform the supervisor of the reasons for the member's dismissal, etc.);

(D) Ensuring full discussion on all matters considered by the TEP. Differences of opinion will be aired to better explore and fully understand all significant issues. When a disagreement cannot be resolved, the TEP reports will reflect dissenting positions and explain how they affected the TEP's recommendations;

(E) Ensuring that TEP findings are thoroughly documented in the reports provided to the SSA;

(F) Ensuring the TEP report is factually supported by the information contained in the proposals and obtained during past performance checks;

(G) Ensuring the TEP report does not contain inconsistent, superfluous, unsubstantiated, or unnecessary statements and conclusions;

(H) Making all meeting arrangements (*e.g.*, reserving facilities, etc.). The Chairperson will ensure that arrangements are made for the participation of members participating remotely (*e.g.*, through phone conference call or videoconferencing);

(I) Ensuring at all times that procedures are in place, and all necessary precautions are taken, to protect the confidentiality of the evaluation process and safeguard TEP records, proposals and other information bearing on the evaluation;

(J) Instructing any committee members, advisors, and consultants as to their role, responsibilities and procedures;

(K) As requested by the CO, participating, and/or obtaining the participation of TEP members, in contract negotiations and debriefings;

- (L) Preparing, or having prepared, information required by the CO for conducting negotiations and debriefings, and for responding to protests;
 - (M) Ensuring that scheduled deadlines for evaluation and reporting are met;
 - (N) Notifying the SSA and CO whenever the TEP will be unable to meet its scheduled deadlines; and
 - (O) Notifying the SSA and CO of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (*e.g.*, Procurement Integrity).
- (ii) If the Technical Evaluation Panel Chairperson is a contractor, they are prohibited from being a voting member, and the contractor is required to perform the following procedural and administrative responsibilities:
- (A) Scheduling and conducting TEP meetings;
 - (B) As designated by the CO, coordinating with any additional committees and advisors needed to assist in the evaluation;
 - (C) Immediately notify the CO when TEP members fail to attend or provide adequate participation. The Chairperson has discretion in determining if full TEP attendance is needed to hold meetings, conduct TEP business, etc. The Chairperson will take reasonable steps to ensure that at least a majority of the voting members are present.
 - (D) Ensuring full discussion on all matters considered by the TEP. Differences of opinion shall be aired to better explore and fully understand all significant issues. When a disagreement cannot be resolved, the TEP reports shall reflect dissenting positions and explain how they affected the TEP's recommendations;
 - (E) Ensuring that TEP findings are thoroughly documented in the reports provided to the Source Selection Authority;
 - (F) Ensuring the TEP report is factually supported by the information contained in the proposals and obtained during past performance checks;
 - (G) Ensuring the TEP report does not contain inconsistent, superfluous, unsubstantiated, or unnecessary statements and conclusions;
 - (H) Making all meeting arrangements (*e.g.*, reserving facilities, etc.). The Chairperson shall ensure that arrangements are made for the participation of members participating remotely (*e.g.*, through phone conference call or videoconferencing);
 - (I) Ensuring at all times that procedures are in place, and all necessary precautions are taken, to protect the confidentiality of the evaluation process and safeguard TEP records, proposals and other information bearing on the evaluation;

- (J) Instructing any committee members, advisors, and consultants as to their role, responsibilities and procedures;
 - (K) As requested by the CO, obtaining the participation of TEP members in contract negotiations and debriefings;
 - (L) Preparing, or having prepared, information required by the CO for conducting negotiations and debriefings, and for responding to protests;
 - (M) Ensuring that scheduled deadlines for evaluation and reporting are met;
 - (N) Notifying the SSA and CO whenever the TEP will be unable to meet its scheduled deadlines; and
 - (O) Immediately notifying the SSA and CO of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (*e.g.*, Procurement Integrity) reported by TEP members or that exist for him/herself.
- (6) *TEP members* are responsible for:
- (i) Assisting in the preparation of the RFP (particularly in developing or revising the statement of work, proposal instructions and evaluation factors for award) and the technical evaluation plan, as requested by the Chairperson or CO;
 - (ii) Meeting as directed by the Chairperson. (TEP duties must take priority over normal duty assignments.);
 - (iii) Being prepared for meetings where substantive discussions or deliberations will take place;
 - (iv) Completing TEP assignments on time;
 - (v) Requesting clarification and explanation of solicitation and proposal documents when needed;
 - (vi) Fully documenting all evaluation findings, including background/reference checks and significant deliberation (*e.g.*, dissenting opinions) and providing salient written bulleted proposal characteristics (to include page citations from the proposal) that support the assigned rating;
 - (vii) As requested by the Chairperson, CO or SSA, preparing information for negotiations, unsuccessful offeror debriefings and responses to protests, and/or participating in negotiations and debriefings;

(viii) Taking all necessary precautions to protect the confidentiality of the evaluation process and safeguard TEP records, proposals and other information bearing on the evaluation; and

(ix) Notifying the Chairperson when they must withdraw from the TEP or of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (*e.g.*, Procurement Integrity).

(7) *The TEP Advisors/consultants:*

(i) Are available as highly specialized Subject Matter Experts, in instances where the TEP does not possess such expertise, to answer technical questions posed by the TEP who may then use the information provided by the advisor/consultant in conjunction with the information provided in the proposal to determine the acceptability of a technical approach;

(ii) May be either Government or Contractor employees;

(iii) Are non-voting members of the TEP;

(iv) Will **not** have access to technical proposals; and

(iv) Must sign any financial conflict of interest certification for TEP Advisors/Consultants, certifying that they understand their responsibilities as a TEP Advisor. This certification states that should the TEP Advisor become aware of proposal information, they must stop advising the TEP, notify the CO within one business day and submit the financial conflict of interest certification contained within the originally signed document. Certification forms are available through the CO or can be accessed on the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(b) *General responsibilities for best value LPTA source selection process.* The following identifies the general responsibilities of primary participants for LPTA source selection process:

(1) *The CO* is the SSA and is responsible for:

(i) Overall management of the entire solicitation, evaluation, and award process;

(ii) Providing the TEP briefing utilizing the mandatory TEP briefing slide deck located on the OCPO webpage in the mandatory templates page, training the TEP members on their roles and responsibilities while participating in the TEP and ensuring that all members of the TEP are aware of the solicitation requirements, evaluation factor and TEP requirements;

(iii) Ensuring that price or cost analysis (as applicable) is conducted by a party/team outside of the TEP and adequately documented;

- (iv) Determining if discussions are necessary and making any necessary competitive range determinations;
- (v) Ensuring all appropriate stakeholders collaborate throughout the evaluation process to facilitate ongoing discussions, and ensure the TEP report is submitted timely and accurately;
- (vi) Ensuring the final source selection decision is completely and satisfactorily documented;
- (vii) Appointing the TEP and any consultants or advisors to the TEP;
- (viii) Reviewing and approving the SSP;
- (ix) Reviewing the TEP report;
- (x) Providing a written selection decision that clearly delineates the rationale for the selection decision; and
- (xi) Perform investigation of Procurement Integrity Act violations.
- (xii) If the TEP Chair is a contractor, the CO is also responsible for:
 - (A) Designating any additional committees and advisors needed to assist in the evaluation.
 - (B) If a TEP member's failure to perform his/her TEP duties hinders the evaluation process, the CO is responsible for taking any necessary remedial action to ensure that the TEP completes its evaluation by the established completion date (*e.g.*, request the cognizant program office head to require the member's attendance or designate a replacement, dismiss the member and inform his/her supervisor of the reasons for his/her dismissal, etc.).

(2) *The Contract Specialist* is responsible for:

- (i) Coordinating with the TEP the dates and times for meetings to perform evaluations and attending such meetings to the extent possible;
- (ii) Taking all necessary precautions to protect the confidentiality of the evaluation process and safeguarding TEP records, proposals and other information bearing on the evaluation;
- (iii) Coordinating with the TEP and Legal Advisor to ensure all required disclosures and reviews are completed prior to forwarding proposals to the TEP Chairperson;
- (iv) Receiving and accounting for all proposals, performing preliminary reviews to ensure all required documentation is submitted, ensuring technical proposals are separated from price proposals, forwarding technical proposals, and any level of effort and labor categories to the TEP Chairperson;

(v) Working with the CO and other advisors to thoroughly analyze the proposed level of effort and labor categories to ensure that they are consistent with the proposed technical approach; and

(vi) Preparing documents for the contract file throughout the proceedings and ensuring all documentation of the evaluations is recovered from the TEP and included in the official procurement file and maintained in the acquisition management system.

(3) *The Office of General Counsel (OGC) advisor* is responsible for:

(i) Reviewing and concurring with the SSP;

(ii) Providing the TEP with an Ethics briefing;

(iii) Providing ongoing legal assistance and advice as needed, including reviews of documents submitted to ensure there are no conflicts of interest;

(iv) Providing collaborative assistance and guidance prior to submission of official TEP reports; and

(v) Reviewing the TEP report(s) and source selection decision and providing comments and assistance as necessary to resolve outstanding issues.

(4) The Technical Evaluation Panel (TEP) Chairperson.

(i) If the Technical Evaluation Panel Chairperson is a Federal employee, the employee is designated as responsible for the following procedural and administrative responsibilities:

(A) Scheduling and conducting TEP meetings;

(B) Designating any additional committees and advisors needed to assist in the evaluation;

(C) Ensuring adequate participation of members. The Chairperson has discretion in determining if full TEP attendance is needed to hold meetings, conduct TEP business, etc. The Chairperson will take reasonable steps to ensure that at least a majority of the voting members are present. If a TEP member's failure to perform TEP duties hinders the evaluation process, the Chairperson is responsible for taking any necessary remedial action to ensure that the TEP completes its evaluation by the established completion date (*e.g.*, request the CO or cognizant program office head to require the member's attendance or designate a replacement, dismiss the member and inform the supervisor of the reasons for the member's dismissal, etc.);

(D) Ensuring full discussion on all matters considered by the TEP. Differences of opinion will be aired to better explore and fully understand all significant issues.

- When a disagreement cannot be resolved, the TEP reports will reflect dissenting positions and explain how they affected the TEP's recommendations;
- (E) Ensuring that TEP findings are thoroughly documented in the reports provided to the Source Selection Authority (*i.e.* the CO), and unacceptable ratings are supported with salient bulleted information and proposal page citations;
 - (F) Ensuring the TEP report is factually supported by the information contained in the proposals and obtained during past performance checks;
 - (G) Ensuring the TEP report does not contain inconsistent, superfluous, unsubstantiated, or unnecessary statements and conclusions;
 - (H) Making all meeting arrangements (*e.g.*, reserving facilities, etc.). The Chairperson will ensure that arrangements are made for the participation of members participating remotely (*e.g.*, through phone conference call or videoconferencing);
 - (I) Ensuring at all times that procedures are in place, and all necessary precautions are taken, to protect the confidentiality of the evaluation process and safeguard TEP records, proposals and other information bearing on the evaluation;
 - (J) Instructing any committee members, advisors, and consultants as to their role, responsibilities and procedures;
 - (K) As requested by the CO, participating, and/or obtaining the participation of TEP members, in contract negotiations and debriefings;
 - (L) Preparing, or having prepared, information required by the CO for conducting negotiations and debriefings, and for responding to protests;
 - (M) Ensuring that scheduled deadlines for evaluation and reporting are met;
 - (N) Notifying the CO whenever the TEP will be unable to meet its scheduled deadlines; and
 - (O) Notifying the CO of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (*e.g.*, Procurement Integrity).
- (ii) If the Technical Evaluation Panel Chairperson is a contractor, they are prohibited from being a voting member, and the contractor is required to perform the following procedural and administrative responsibilities:
- (A) Scheduling and conducting TEP meetings;

- (B) As designated by the CO, coordinating with any additional committees and advisors needed to assist in the evaluation;
- (C) Immediately notify the CO when TEP members fail to attend or provide adequate participation. The Chairperson has discretion in determining if full TEP attendance is needed to hold meetings, conduct TEP business, etc. The Chairperson will take reasonable steps to ensure that at least a majority of the voting members are present;
- (D) Ensuring full discussion on all matters considered by the TEP. Differences of opinion shall be aired to better explore and fully understand all significant issues. When a disagreement cannot be resolved, the TEP reports shall reflect dissenting positions and explain how they affected the TEP's recommendations;
- (E) Ensuring that TEP findings are thoroughly documented in the reports provided to the Source Selection Authority;
- (F) Ensuring the TEP report is factually supported by the information contained in the proposals and obtained during past performance checks;
- (G) Ensuring the TEP report does not contain inconsistent, superfluous, unsubstantiated, or unnecessary statements and conclusions;
- (H) Making all meeting arrangements (*e.g.*, reserving facilities, etc.). The Chairperson shall ensure that arrangements are made for the participation of members participating remotely (*e.g.*, through phone conference call or videoconferencing);
- (I) Ensuring at all times that procedures are in place, and all necessary precautions are taken, to protect the confidentiality of the evaluation process and safeguard TEP records, proposals and other information bearing on the evaluation;
- (J) Instructing any committee members, advisors, and consultants as to their role, responsibilities and procedures;
- (K) As requested by the CO, obtaining the participation of TEP members in contract negotiations and debriefings;
- (L) Preparing, or having prepared, information required by the Contracting Officer (CO) for conducting negotiations and debriefings, and for responding to protests;
- (M) Ensuring that scheduled deadlines for evaluation and reporting are met;
- (N) Notifying the CO whenever the TEP will be unable to meet its scheduled deadlines; and

(O) Immediately notifying the CO of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (*e.g.*, Procurement Integrity) reported by TEP members or that exist for him/herself.

(5) *TEP members* are responsible for:

(i) Assisting in the preparation of the RFP (particularly in developing or revising the statement of work, proposal instructions and evaluation factors for award) and the technical evaluation plan, as requested by the Chairperson or CO;

(ii) Meeting as directed by the Chairperson (TEP duties must take priority over normal duty assignments.);

(iii) Being prepared for meetings where substantive discussions or deliberations will take place;

(iv) Completing TEP assignments on time;

(v) Requesting clarification and explanation of solicitation and proposal documents when needed;

(vi) Fully documenting all evaluation findings, including background/reference checks and significant deliberation (*e.g.*, dissenting opinions) and providing salient written bulleted proposal characteristics (to include page citations from the proposal) that support any unacceptable ratings;

(vii) As requested by the Chairperson or CO, preparing information for negotiations, unsuccessful offeror debriefings and responses to protests, and/or participating in negotiations and debriefings;

(viii) Taking all necessary precautions to protect the confidentiality of the evaluation process and safeguard TEP records, proposals and other information bearing on the evaluation; and

(ix) Notifying the Chairperson when they must withdraw from the TEP or of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (*e.g.*, Procurement Integrity).

(6) *The TEP Advisor/consultant:*

(i) Are available as highly specialized Subject Matter Experts, in instances where the TEP does not possess such expertise, to answer technical questions posed by the TEP who may then use the information provided by the advisor/consultant in conjunction with the information provided in the proposal to determine the acceptability of a technical approach;

(ii) May be either Government or Contractor employees;

- (iii) Are non-voting members of the TEP;
- (iv) Will not have access to technical proposals; and
- (v) Must sign any financial conflict of interest certification for TEP Advisors/Consultants that certifies that they understand their responsibilities as a TEP Advisor. This certification states that should the TEP advisor becomes aware of proposal information, they must immediately stop advising the TEP, notify the CO within one business day and submit the financial conflict of interest certification contained within the originally signed document. Certification forms are available through the CO or can be accessed on the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

- (c) If, for any reason, the designated SSA, the TEP Chairperson or a TEP member cannot perform the duties required, a new SSA, TEP Chairperson or TEP member must be appointed, in writing, prior to the TEP Chairperson or the CO providing any source selection information to the newly designated SSA, TEP Chairperson or TEP member.

2415.304 - Evaluation factors.

- (a) The CO will ensure that the evaluation factors for each solicitation address its particular requirements and evaluation needs. The Program Office is responsible for identifying and customizing the factors and providing them to the CO and SSA for review. The Program Office will provide the draft factors to the CO at the initial IAT meeting. The CO will assist the Program Office in selecting factors appropriate to the immediate source selection. All revisions to the factors require revisions to the corresponding instructions. Mandatory templates that include a respective list of instructions to offerors, evaluation factors and rating scales for best value tradeoff source selections and best value LPTA source selections are accessible through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

- (b) Evaluation factors contained in the templates identified herein must be used unless a waiver is granted by the Deputy CPO.

2415.304-70 - Evaluation Plans.

- (a) The CO will ensure that the Program Office develops a written plan for evaluating proposals. The Source Selection Plan (SSP) describes the methodology the TEP will use to rate and rank proposals in accordance with the selection factors in the RFP. The evaluation plan must include the evaluation factors that are included in the RFP. The evaluation factors delineated in the solicitation must be exactly as written in the evaluation plan. Mandatory Source Selection Plan templates for best value tradeoff and LPTA proposal evaluation are accessible at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

- (b) The TEP chairperson and/or any of the TEP members may help develop the plan.
- (c) The Program Office must submit the plan to the CO or the SSA for approval prior to release of the solicitation.
- (d) The CO will not release the solicitation until the SSA has concurred, in writing, with the SSP (See FAR 15.303(b)(2)). Once the SSP is approved by the CO and the SSA, the approved plan will be maintained in the official procurement file located in the acquisition management system.
- (e) If, for any reason, the evaluation factors in the RFP change after the SSP has been approved by the SSA, the plan will be promptly amended in writing, to reflect the revised evaluation factors. The SSA will approve the amended plan. The evaluation factors in the revised SSP must be exactly as written in the RFP. Under no circumstances may the factors in the source selection plan be revised prior to the CO revising and amending the evaluation factors in the RFP. The approved amended plan will be maintained in the official procurement file located in the acquisition management system.
- (f) The evaluation plan is considered source selection information and must be treated confidentially. It will be handled and marked as required in Handbook 2403.104-4.

2415.305 – Proposal evaluation.

2415.305-70 – Evaluation ratings for best value tradeoff source selections. The CPO developed standardized generic adjectival ratings to be utilized during a best value tradeoff source selection. The generic adjectival ratings are found in the mandatory templates that include a respective list of instructions to offerors, evaluation factors and rating scales accessible at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2415.305-71 – Evaluation ratings for best value LPTA source selections.

When utilizing best value LPTA source selection procedures, each evaluation factor is rated either “Acceptable” or “Unacceptable.” The minimum requirement to be determined acceptable for each evaluation factor must be identified in the solicitation. The TEP must then use the minimum requirement for acceptability in evaluating proposals. The minimum requirements established for acceptability cannot be arbitrary or biased toward a particular offeror or group of offerors.

2415.305-72 - TEPs for best value source selections.

- (a) The purpose of the TEP is to provide the programmatic expertise necessary to impartially evaluate an offeror’s technical and management proposal and to provide technical advice to the CO and SSA throughout the proposal evaluation process.
- (b) TEPs must be used for all competitive, negotiated contract awards.

(c) TEP's may be used for other than fully competitive contract awards (*e.g.*, sole source or limited competition).

(d) TEPs should not be used for competitive simplified acquisitions.

2415.305-73 - Proposal evaluation process for best value tradeoff source selections.

(a) Use of SharePoint or other shared evaluation site when using best value tradeoff source selection procedures:

(1) The proposal evaluation process will utilize HUD's SharePoint site or other approved shared evaluation share sites, as a tool in assisting the TEP and stakeholders to document the process. The CO will ensure that the site is set up to permit the appropriate levels of access to each stakeholder in the evaluation process. This will include the TEP members, and applicable OCPO personnel. The CS will ensure the final SSP, the individual evaluation worksheets, the consensus work sheets and the offeror technical proposals are uploaded to the site. If applicable, the CS will also ensure the labor categories and level of effort are uploaded as the TEP will need this information if the evaluation factors require assessment of level of effort and labor categories. No pricing information is uploaded at this time unless it is segregated from access by the TEP.

(2) Use of SharePoint will facilitate the ability of evaluators to perform their evaluations while not requiring them to be collocated. At the discretion of the TEP Chairperson and the individual's supervisor, TEP members may perform their evaluations from home or some other location conditioned upon their written agreement that they will not print any documents from the SharePoint site at the remote location, they will not take any source selection documents to the remote locations, and that they will take precautions to avoid any disclosure (either written or oral) of source selection information and confidential information submitted by the offerors. They will also agree to immediately report any disclosure to both the TEP Chair and the CO. TEP members will not perform evaluations within sight of other Government or non-Government personnel and oral conversations will not be conducted within earshot of unauthorized personnel.

(3) Evaluators will perform their individual evaluations on the SharePoint site using the folder specifically set up for each evaluator. The CO will ensure that only the individual evaluator has access to this folder and, upon completion of the individual evaluations, the CO will lock the documents from further edits. Upon being notified that all individual evaluations are complete, the CO and the TEP Chairperson will then facilitate the consensus discussions and collaborate on the report writing using a separate folder in the SharePoint site. All TEP members will have access to this site for discussing and collaborating in writing the consensus report. The site will utilize the version control function of SharePoint.

(4) Upon completion of the consensus TEP report, the CO will share the results of the price analysis with the TEP to facilitate the collaboration between the CO and the TEP in drafting the recommended tradeoff analysis for the SSA. The CO will draft the recommended tradeoff analysis using a separate folder in the SharePoint site. All TEP members will have access to

this site for discussing and collaborating in writing the tradeoff recommendation. The site will utilize the version control function of SharePoint.

(5) Use of shared sites other than SharePoint may be authorized by the Deputy CPO. However, the evaluation process as outlined herein must be followed.

(6) Email is NOT an acceptable means for TEPs to exchange information associated with evaluations.

(b) The proposal evaluation process when utilizing best value tradeoff source selection procedures is as follows:

(1) Step One – If three or fewer proposals are received, proceed to step two. If more than three proposals are received in response to the solicitation, perform a normalization of the technical evaluation process; the TEP will proceed with steps two and three identified below on two (2) proposals and review the results with the CO and OGC to ensure the TEP members:

- (i) Are following the evaluation factors as described and stipulated in the solicitation;
- (ii) Are using the rating scales as identified and documented in the Source Selection Plan;
- (iii) Are consistently applying ratings for similar weaknesses and deficiencies from one offeror to another;
- (iv) Are using the correct best value procedures for a tradeoff acquisition; and
- (v) Are sufficiently documenting their findings to include citing the areas within the proposal to support their findings.

(2) Step two - Individual technical evaluations.

(i) Voting TEP members will independently evaluate proposals against the evaluation factors as identified and described in the solicitation. TEP members will not independently discuss proposals with other TEP members or advisors. The TEP Chairperson will seek the advice in any areas that need clarification and report back to the TEP members. TEP members may seek information or advice from the CO or CS at any time. The TEP is restricted from considering or obtaining additional information in evaluating an offeror's proposal, except when evaluating past performance (if applicable to the acquisition). Members will make every effort to not compare proposals to one another at this stage. Each proposal will be analyzed only against the evaluation factors for award contained in the solicitation. Each TEP member will make substantive comments (which must address strengths, weaknesses, significant weaknesses and deficiencies) in the evaluation record for use in the consensus process; they may assign a preliminary rating to the proposals. It is important that evaluations be fully substantiated, and the notes include specific references to page or paragraph numbers in the proposals.

(ii) Each member will assign each individual factor an appropriate rating (excellent, good, fair, marginal, unacceptable, neutral (in the case of past performance)) using the rating scale established for each specific evaluation factor. The individual ratings reflect each TEP member's individual assessment of the proposal submission against that factor. Then each member must also assign a preliminary rating to the entire proposal of unacceptable, acceptable, or unacceptable but capable of being made acceptable (hereafter referred to as "capable"). Each TEP member must use the TEP Evaluation Form sheets for their individual evaluations and each member must complete all the evaluation sheets for each offeror.

(iii) Each TEP member will provide written comments that support his or her findings in the space provided after each factor in the SharePoint evaluation record. The comments should be concise and must be detailed to support his or her position including the strengths, weaknesses, significant weaknesses and deficiencies. The comments must also include specific references (*e.g.* page or paragraph numbers) to submission content. When evaluating the proposals, TEP members must stick closely to the stated evaluation factors and not include extraneous material or make unsupported statements. Comments must sufficiently address how well the proposal submission meets the criteria for each factor.

(iv) When assessing level of effort and labor categories, as required by the solicitation, the TEP will consider whether these elements of the Business Proposal support the overall technical approach outlined in the proposal. For example, an offeror may propose a superior technical solution, but level of effort and labor category information reflects insufficient staffing to accomplish the task as proposed or the approach may not be cost effective (offering a Cadillac when we only need a Ford). An offeror may also propose to utilize superior subcontractors but is then identified in their business proposal as proposing to exceed the regulatory limitations for subcontracting, which would affect their eligibility for an award.

(3) Step three – Consensus technical evaluation.

(i) Once all the TEP members have completed their individual evaluations, the voting TEP members, as a group, will convene to review and discuss the individual evaluations. This does not require the members to convene in a single location if SharePoint is utilized to document the discussions. The voting TEP members will discuss their individual evaluations to the extent necessary to reach a consensus opinion and will then rate and determine the technical acceptability of each proposal. The TEP will document the evaluations on a consensus basis. The TEP must support all ratings with narrative justification (may be in salient bullet format), including specific references to pages or paragraphs of the proposals and the strengths, weaknesses, significant weaknesses and deficiencies.

(ii) With the exception of additional information provided to the TEP by the CO (*e.g.*, results of reference checks), panelists may not consider any information other than that contained in the offeror's proposal/proposal revision and any past performance information (as applicable to the acquisition) obtained subsequent to receipt of proposals, regardless of the panelists' knowledge of such information (*e.g.*, having past dealings with an offeror's

employees under a previous contract). Panelists may consult the TEP Chairperson or CO at any time during the evaluation process.

(4) *Step four (a)* - TEP report.

(i) The TEP will write a TEP Report to assess all the offerors. Under each factor, the report will state the conclusion and then provide specific strengths, weaknesses, significant weaknesses and/or deficiencies in the proposal that support the conclusion and identify citations within the proposal to support the rating. The TEP must avoid statements that appear unsupported, inconsistent, or unnecessary. The *Technical Evaluation Report* template for Best Value Tradeoff Acquisition can be accessed on the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(ii) The TEP must remember that:

(A) This acquisition is using best value tradeoff analysis;

(B) The evaluation factors have the priority of importance in relation to each other as stipulated in the solicitation; and

(C) The evaluation factors have an associated importance in comparison to cost or price as defined in the solicitation.

(iii) The TEP will then finalize the report which reflects the TEP's overall technical assessment of all the offerors.

(5) *Step four (b)* – Price analysis. Concurrent with the development of the initial TEP report the CO or price analysis team will perform price analysis.

(i) Price analysis is conducted by the CO or a price analysis team which the CO oversees. The price analysis is not conducted by the technical evaluation panel.

(ii) The price analysis must be conducted strictly in accordance with the methodology outlined in the solicitation.

(iii) Weaknesses and deficiencies in price may be addressed with offerors only if the CO elects to conduct discussions (see Step eight).

(6) *Step five* – Clarifications or communications. The CO will determine if clarifications or communications are needed.

(i) Clarifications are limited exchanges, between the Government and offerors that may occur when award without discussions is *contemplated*. If award is anticipated to be made without conducting discussions, offerors may be given the opportunity to clarify certain

aspects of proposals (*e.g.*, the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors. Like deficiencies and significant weaknesses, adverse past performance information is information that materially affects an offeror's past performance rating or chance of receiving the award.

(A) Clarifications are held by the CO.

(B) Offerors cannot revise a proposal through clarifications.

(C) After clarifications are concluded and the TEP makes any associated changes to its ratings based upon the information received, identifies the proposals that are determined to be technically acceptable and ranks them. See Step six if award without discussions is anticipated or Step eight if recommending that the CO enter into discussions.

(ii) Based upon the method of selection stated in the Request for Proposal (RFP) (*e.g.* discussions are not anticipated to be held), the TEP will decide by consensus whether or not to: 1) recommend the SSA make an immediate selection without discussions (proceed to step six), or 2) recommend discussions be held with one or more offerors (proceed to step seven and skip step six). Regardless of the proposed recommendation, the CO must review and approve the recommendation prior to submission.

(7) *Step six* – If the recommendation is made to make an immediate selection without discussions or after clarifications have been completed, the TEP will submit their report to the CO and assist with tradeoff analysis.

(i) Remember that the rating is simply the technical assessment of each offeror's proposal against the stipulated evaluation factors, while ranking includes comparison of individual proposals to all others submitted. The TEP will rank the proposals from highest to lowest utilizing the technical and other discriminators, other than price, that distinguish each proposal from the others. For example, the TEP may identify multiple proposals as overall technically Good, but that does not necessarily mean that they are all equal; there are likely specific differences between them that result in one being considered to be of a higher or lower quality to the Government than others similarly rated.

(ii) The CO receives the TEP's report and rankings. The CO compares the price analysis (which the CO or a price analysis team (other than the technical team) conducted) ranking results with the TEP rankings. If the TEP-recommended offeror is the highest technically rated AND lowest evaluated priced, no additional justification is needed. If the TEP-recommended offeror is not offering the lowest evaluated price, then the CO will work with the TEP and price analysis team to perform a tradeoff analysis documenting why an offeror is recommended for selection and why the Government is recommending to pay more for a stronger technical proposal. However, the highest technically ranked proposal may not always be the recommended awardee. For example, a proposal rated technically as Excellent may be ranked lower than a Good proposal if, for example, its technical

superiority does not merit paying a significantly higher price (*i.e.* the Government only requires the minimum requirements to be met).

(iii) Some guidance regarding tradeoffs issued in various protest decisions can be summed up in a few principles:

(A) The documentation must effectively demonstrate that any perceived additional technical merit in a given offer is worth the additional premium in price;

(B) The greater the premium in price, the greater the documentation must show the worth; and

(C) In the event the Government selects a low price/low technical proposal, the documentation must clearly demonstrate and explain why the technical merit of the other proposals is not worth the additional premium in price. The danger inherent here is that an award to the lower or lowest priced/ranked bid gives the appearance of giving cost factors more weight than specified in the RFP. The GAO and court have upheld such awards when the underlying documentation supporting the decision adequately and rationally justifies the decision. The selection official must support the decision that the premium for any technically superior proposals was not worth it compared to the value of the winning proposal. The decision, therefore, was not based on cost, but value.

(iv) The TEP Chair will complete a recommended award decision/selection for submission to the SSA and include the supporting tradeoff analysis, TEP report and price analysis. If the CO is not in agreement, the CO may prepare and submit a separate recommendation to the SSA. A separate CO recommendation must specify the specific areas of disagreement and document a full tradeoff recommendation.

(8) *Step seven*– Communications prior to competitive range determination.

(i) If the TEP consensus, at this time, recommends holding discussions to obtain additional information from one or more offerors, the TEP will provide a report to the CO addressing each technical evaluation factor and identifying items to be included in discussions for each offeror evaluated. The TEP report will include the proposals that are determined to be technically acceptable or unacceptable, but capable of being made technically acceptable through discussions and will include the proposal ranking.

(ii) The CO may determine that communications are needed prior to making a competitive range determination. Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established these communications:

(A) Will include:

(1) offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications will address adverse past performance information to which an offeror has not had a prior opportunity to respond. Like deficiencies and significant weaknesses, adverse past performance information is information that materially affects an offeror's past performance rating or chance of receiving the award; and

(2) those offerors whose exclusion from, or inclusion in, the competitive range is uncertain.

(B) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications will not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range.

(C) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications will not provide an opportunity for the offeror to revise its proposal but may address ambiguities in the proposal or other concerns (*e.g.*, perceived deficiencies, weaknesses, errors, omissions, or mistakes (as described in FAR 14.407)) and information relating to relevant past performance.

(D) After communications are concluded and the TEP makes any associated changes to its ratings based upon the information received, identifies the proposals that are determined to be technically acceptable and ranks them.

(9) *Step eight* - Competitive Range Determination. The CO may determine that the number of mostly highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted and may decide to limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(A) While the TEP may make recommendations, the CO has the sole authority to determine the competitive range for discussions including those firms determined to be "unacceptable but capable of being made acceptable through discussions."

(B) The competitive range determination will clearly explain why proposals were excluded. Competitive range determinations must be documented on the Mandatory Competitive Range Template located on the OCPO website.

(C) The CO will promptly notify, in writing, all offerors whose proposal have been eliminated from further consideration for award.

(10) *Step nine* - Discussions. Once the competitive range has been determined, the CO will

determine to hold written discussions. Upon completion of discussions, the CO will request each offeror to submit their Final Proposal Revisions (FPRs). The CO will ensure the FPRs are added to the SharePoint site and the voting TEP members will follow the process for initial proposal evaluations and independently review all of the FPR submissions. The TEP will then compare individual ratings and notes, coordinate with the CO, reconcile substantive differences in understanding of proposal content, and arrive at a majority (if not unanimous) position on each proposal. Where dissenting opinions remain after discussions, the TEP report should discuss any impact they had on the final consensus rating.

(11) *Step ten* – Award recommendation.

(i) TEP members will sign the TEP Report, stating that they concur in the report and that any differences in the individual evaluation sheets have been resolved.

(ii) The CO receives the TEP's report and rankings. The CO compares the price analysis results with the TEP rankings. If the TEP-recommended offeror is the highest technically rated AND lowest evaluated priced, no additional justification is needed. If the TEP-recommended offeror is not offering the lowest evaluated price, then the CO will work with the technical evaluation panel and price analysis team to perform a tradeoff analysis documenting why an offeror is recommended for selection and why the Government is recommending to pay more for a stronger technical proposal (during the tradeoff analysis, the CO will share the price analysis and TEP report with all members of the team). If the CO and TEP cannot agree, each entity will document their tradeoff analysis to be provided to the SSA. A separate CO recommendation must specify the specific areas of disagreement and document a full tradeoff recommendation. The highest technically ranked proposal may not always be the recommended awardee. For example, a proposal rated technically as Excellent may be ranked lower than a Good proposal if its technical superiority does not merit paying a significantly higher price (*i.e.* the Government only requires the minimum requirements to be met). Some guidance regarding tradeoffs issued in various protest decisions can be found in Step 6.

(12) *Step eleven* – Award. The SSA will select the source whose proposal offers the best value to the Government in accordance with the established evaluation criteria.

(i) The SSA's decision will be based on a comparative assessment of proposals against all source selection criteria in the solicitation, considering recommendations and minority opinions presented. While the SSA may use reports and analyses prepared by others, the source selection decision must represent the SSA's independent analysis and judgement.

(ii) The SSA will document the supporting rationale in the Source Selection Decision using the Source Selection Decision Memorandum (SSDM), Best Value Tradeoff Acquisition Memorandum Template located at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(iii) If the CO is the SSA, the CO is the signature level for the recommended award decision. After signing the SSDM, the CO will proceed with necessary approvals and award.

(c) The SSA may reject all offerors proposals and all recommendations for award. In this instance, the CO will determine whether to:

- (1) Enter into discussions if discussions have not been initiated (award without discussions anticipated by the CO);
- (2) Amend the solicitation to correct the deficiency or omissions noted by the SSA; or
- (3) Cancel the solicitation.

2415.305-74 - Proposal evaluation process for best value LPTA source selections.

(a) Use of SharePoint or other shared evaluation site when using best value LPTA source selection procedures.

(1) The proposal evaluation process will utilize HUD's SharePoint site application or other shared evaluation site as a tool in assisting the TEP and stakeholders to document the process. The CO will ensure that the site is set up to permit the appropriate levels of access to each stakeholder in the evaluation process. This will include the TEP members, and applicable OCPO personnel. The CS will ensure the final SSP, the individual evaluation worksheets, the consensus work sheets and the offeror technical proposals are uploaded to the site. The CS will also ensure the labor categories and level of effort are uploaded as the TEP will need this information if the evaluation factors require assessment of level of effort and labor categories. No pricing information is uploaded at this time unless it is segregated from the TEP.

(2) Use of SharePoint will facilitate the ability of evaluators to perform their evaluations while not requiring them to be collocated. At the discretion of the TEP Chairperson and the individual's supervisor, TEP members may perform their evaluations from home or some other location conditioned upon their written agreement that they will not print any documents from the SharePoint site at the remote location, they will not take any source selection documents to the remote locations, and that they will take precautions to avoid any disclosure (either written or oral) of source selection information and confidential information submitted by the offerors. They will also agree to immediately report any disclosure to both the TEP Chair and the CO. TEP members will not perform evaluations within sight of other Government or non-Government personnel and oral conversations will not be conducted within earshot of unauthorized personnel.

(3) Evaluators will perform their individual evaluations on the SharePoint site using the folder specifically set up for each evaluator. The CO will ensure that only the individual evaluator has access to this folder and, upon completion of the individual evaluations, the CO will lock the documents from further edits. Upon being notified that all individual evaluations are complete, the CO and the TEP Chair will then facilitate the consensus discussions and

collaborate on the report writing using a separate folder in the SharePoint site. All TEP members will have access to this site for discussing and collaborating in writing the consensus report. The site will utilize the version control function of SharePoint.

(4) Use of shared sites other than SharePoint may be authorized by the CPO or Deputy CPO. However, the evaluation process as outlined herein must be followed.

(5) Email is NOT an acceptable means for TEPs to exchange information associated with evaluations.

(b) The proposal evaluation process when utilizing best value LPTA source selection procedures is as follows:

(1) *Step one* - Identify the order for technical evaluations.

(i) The CO will rank the proposals in order from lowest priced to highest priced.

(ii) The TEP will be tasked with performing the technical evaluation on the lowest priced offer first.

(2) *Step two* – Perform individual technical evaluation of the first proposal.

(i) Voting TEP members will independently evaluate the first proposal against the evaluation factors as identified and described in the solicitation. TEP members will not independently discuss proposals with other TEP members or advisors. The TEP Chairperson will seek the advice in any areas that need clarification and report back to the TEP members. TEP members may seek information or advice from the CO or CS at any time. Past performance and/or previous experience must not be evaluated under independent evaluation factors in a LPTA acquisition (past performance and/or previous experience are considered as part of the responsibility determination and any small business that is found non-responsible and is otherwise in line for award must be referred to the SBA for a Certificate of Competency). The TEP is restricted from considering or obtaining additional information in evaluating an offeror's proposal. Each proposal will be analyzed only against the evaluation factors for award contained in the solicitation. Each TEP member will document whether the technical proposal is acceptable or unacceptable for each evaluation factor. Substantive comments are required to support an unacceptable rating for any factor and the TEP member must identify areas within the proposal that make it unacceptable.

(ii) Each member will assign each individual factor an appropriate rating (acceptable or unacceptable) that reflects their individual assessment of the proposal submission against that factor. Then each member must also assign a preliminary rating to the entire proposal of unacceptable, acceptable, or unacceptable but capable of being made acceptable (hereafter referred to as "capable"). Each TEP member must use the TEP Evaluation Form sheets for their individual evaluations and each member must complete all the evaluation sheets for each offer.

(iii) When assessing level of effort and labor categories, as required by the solicitation, the TEP will consider whether these elements of the Business Proposal support the overall technical approach outlined in the proposal. For example, an offeror may propose an acceptable technical solution, but level of effort and labor category information reflects insufficient staffing to accomplish the task as proposed or the approach may not be cost effective (offering a Cadillac when we only need a Ford). An offeror may also propose to utilize superior subcontractors but is then identified in their business proposal as proposing to exceed the regulatory limitations for subcontracting, which would affect their eligibility for an award.

(3) *Step three* – Consensus technical evaluation of first proposal.

(i) Once all of the TEP members have completed their individual evaluations, the voting TEP members, as a group, will convene to review and discuss the individual evaluations. This does not require the members to convene in a single location if SharePoint or similar tool is utilized to document the discussions. The voting TEP members will discuss their individual evaluations to the extent necessary to reach a consensus opinion and will then rate and determine the technical acceptability of the proposal. The TEP will document the evaluations on a consensus basis. The TEP must support all ratings of unacceptability with narrative justification (may be in salient bullet format), including specific references to pages or paragraphs of the proposal.

(ii) If the consensus is that the first proposal is not technically acceptable, the TEP will meet with the CO and the Office of General Counsel (OGC) to ensure the TEP is following the correct procedures in accordance with the solicitation. If the procedures the TEP is following are accurate, the CO will provide the next lowest priced proposal to the TEP for evaluation. The CO and TEP team will proceed in accordance with Steps Two, Three, and Four until such time as a second technically acceptable proposal is identified.

(iii) If the TEP finds the first three proposals to be technically unacceptable, the CO will:

(A) consider whether a flawed PWS requires that an amendment be issued and new proposals submitted; or

(B) conduct discussions.

(4) *Step four* – Awarding without discussions.

(i) When award is to be made on the basis of the initial offers received, the initial TEP report will be considered the final report. The Technical Evaluation Report Template for *Best Value LPTA Acquisitions - Award Without Discussions* is accessible on the OCPO intranet site under at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(ii) If the CO determines to award without discussions, the TEP will provide the TEP report, the CO will evaluate and document the price analysis and the CO will proceed to award. The CO must document the process for evaluation, proposals that were not evaluated and the reason they were not evaluated (for example, the proposal was considered #4 regarding lowest price based upon the submitted price and the Government determined #3 to be lowest priced technically acceptable; therefore, the Government did not perform technical evaluations on any proposals beyond #3). If relying upon competition as the basis for determining prices fair and reasonable, the CO must be able to document that at least two technically acceptable offers were evaluated and the lowest of those two resulted in best value.

(iii) Each TEP member will sign the TEP Report, stating that they concur in the report and that any differences in the individual evaluation sheets have been resolved.

(5) *Step five* – If discussions are required.

(i) COs are encouraged to have discussions if proposed prices are not in line with expectations, even if pricing is the only item discussed. If discussions are held, all proposals will be evaluated prior to the CO entering into discussions with any of the offerors.

(ii) If none of the submitted proposals are determined technically acceptable or the CO determines that discussions are needed, the TEP and CO must have evaluated all timely, conforming proposals and identified the weaknesses, significant weaknesses and deficiencies for discussions and the CO will identify price-related items for discussions.

(iii) If the TEP consensus or the CO, at this time, recommends holding discussions to obtain additional information from one or more offerors, the TEP will provide an initial report recommending discussions to the CO addressing each technical evaluation factor and identify items to be included in discussions for each offeror evaluated. The *Technical Evaluation Report Template for Best Value LPTA Acquisitions - Recommending Discussions* is accessible on the OCPO intranet site under at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(iv) The CO will determine to hold written discussions with offerors determined to be in the competitive range. Upon completion of discussions, the CO will request each offeror to submit their Final Proposal Revisions (FPRs). The CO will ensure the FPRs are added to the SharePoint site and the CO and voting TEP members will follow the process for initial proposal evaluations and review the lowest priced FPR submission first.

(v) The process will continue as identified in Steps One, Two, Three and Four for FPRs until the lowest priced technically acceptable offer is identified and award is made.

(vi) Each TEP member will sign the final TEP Report stating that they concur in the report and that any differences in the individual evaluation sheets have been resolved. The

Technical Evaluation Report Template for Best Value LPTA Acquisitions - Final Report After Discussions is accessible on the OCPO intranet site under at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(vii) The TEP will provide the final TEP report, the CO will document the price analysis and the CO will proceed to award. The CO must document the process for evaluation (lowest price evaluated technically first, etc.), proposals that were not evaluated and the reason they were not evaluated.

2415.308 - Source selection decision.

2415.308-70 – Documenting the source selection decision.

(a) Source selection when utilizing *the best value tradeoff source selection process*.

(1) The CO's recommended award decision including the tradeoff analysis, TEP report, and price analysis provide guides to facilitate intelligent decision making on the part of the Source Selection Authority (SSA). In selecting the offeror(s) for award, the SSA shall consider the findings and recommendations contained in the CO's recommended award decision, but the SSA is not bound to this recommendation.

(2) The SSA cannot simply concur with the evaluations and recommendations of the TEP. The SSA must clearly indicate how and where he/she disagrees with the findings of the recommended award decision, if any. The SSA will not select any offer that has failed to meet minimum requirements of the solicitation.

(3) The SSA decision shall be written in the first person when appropriate: *e.g.* "I have concluded; I have decided..." etc.

(4) While the SSA may use reports and analyses prepared by others, the source selection decision shall be documented, and the documentation shall include the rationale or any business judgements and tradeoffs made or relied upon by the SSA, including benefits associated with additional costs. The documentation need not quantify the tradeoffs that led to the decision.

(5) It is important to be specific about the strengths and weaknesses, their significance to the program and their relationship to the conclusion or decision made. If the SSA is not satisfied that the price or technical evaluations were performed entirely consistent with the stated evaluation factors, the SSA has several options:

(i) Send the report back to the CO, TEP, and/or price analysis team for further evaluation and necessary correction.

(ii) Obtain clarifications from the CO, TEP and/or price analysis team through questions and answers.

(iii) Discard the recommended award decision and require a new technical and/or price evaluation.

(6) The template for use by the SSA to document any of the above decisions is the SSDM format which can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(b) When utilizing **best value LPTA source selection procedures**.

(1) The government will use a lowest price, technically acceptable best value process; thus the Government will first evaluate offeror's prices and then evaluate the apparent lowest-priced proposal for acceptability under the technical factors.

(2) If the lowest-priced offeror is evaluated as unacceptable, the Government will then consider the acceptability of the next lowest-price offeror, continuing this process until such time as the lowest priced technically acceptable proposal is identified.

(c) When utilizing **either the best value tradeoff or LPTA source selection process**, the CO will document all decisions and determinations using the mandatory templates on the OCPO webpage at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

Subchapter 2415.4 – Contract Pricing

2415.406 - Documentation.

The CO must ensure that all price analysis is documented and maintained either as a separate document or included in the PNM with a notation that discussions did not occur.

2415.406-1 – Pre-negotiation objectives.

2415.406-170

Regardless of whether an acquisition is tradeoff or LPTA, pre-negotiation objectives must be fully documented on the mandatory *Pre-Negotiation Objectives* template found on the OCPO website. All required reviews will be obtained prior to entering into negotiations. Contract Specialists will not enter into negotiations without prior written approval of the CO. The Pre-Negotiation Objectives will be maintained in the official procurement file in the acquisition management system.

2415.406-2 – Certificate of current cost or pricing data.

2415.406-270

Certificate of current cost or pricing data. A *Certificate of Current Cost or Pricing Data* format is located at FAR 15.406-2(a).

2415.406-3 - Documenting the negotiation.

In addition to the PNM requirements in FAR 15.406-3, COs must comply with the following:

(a) *General requirement.* The CO must complete a PNM for each:

(1) New negotiated contract award exceeding the simplified acquisition threshold;

(2) Modification that changes the contract value when the absolute value of the negative and positive price changes added together exceed the Simplified Acquisition Threshold (*e.g.*, a +\$80,000 change and a -\$80,000 change = an absolute change of \$160,000 where the SAT is \$150,000) or makes substantive changes to the contract's work description or other non-price requirements (*e.g.*, supplemental agreements pursuant to a change order). Modifications that do not involve negotiated changes to contract price or work (*e.g.*, exercise of option, administrative change, or change order – but not the follow-up supplemental agreement) are exempt from this requirement; and

(3) New task order and delivery order unless all elements of the order are pre-priced and there is no negotiation or discussion of cost/price or other factors.

(b) The CO or a higher-level OCPO official may require a PNM for awards and modifications of lesser value based upon the specific circumstances of the individual contract or modification.

(c) *PNM template.* The PNM must be prepared using the mandatory template available on the OCPO intranet site at:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) *Cost and price discussion.*

(1) The PNM will explain any significant differences between proposed, objective, and negotiated cost. It will also explain any deviations from recommendations made by auditors or the TEP. Discussion of individual cost elements should be limited to those proposed items of cost to which the CO, the auditor (if applicable), or TEP took exception.

(2) If the proposed contract price is determined to be reasonable based on price analysis, the PNM will include the basis for the price analysis (*e.g.*, historical pricing data, adequate price competition, etc.; see FAR Subpart 15.4) and its results.

(3) If a combination of price and cost analysis is used to determine the reasonableness of the price, the PNM will discuss each to the extent needed.

(e) *Approval*. The CO is the signature level for the PNM.

(f) *Filing*. All PNMs will be maintained in the official procurement file within the acquisition management system.

Subchapter 2415.5 – Pre-award, Award, and Post-award Notifications, Protests, and Mistakes

2415.506 - Post-award debriefing of offerors.

(a) The CO will debrief all unsuccessful offerors who submit a timely request for a debriefing. All debriefings will be in accordance with FAR Subpart 15.6 and will be prepared and conducted as outlined in the *Office of the Chief Procurement Officer's Debriefing Guide* located on the OCPO intranet site. Debriefings will include the overall evaluated cost or price, including unit prices and technical ratings, if applicable. Unit prices are not exempt from FOIA requests. Technical or program personnel (*e.g.*, TEP members) will assist in preparing responses to requests for information and assist or otherwise participate in debriefings at the invitation of the CO. The CO will conduct and control all debriefings of unsuccessful offerors (b) COs must maintain notices to unsuccessful quotes or offerors and records of any debriefings in the official contract file. Notice may be issued only after the TEP evaluation is complete and the source selection decision has been documented

(c) The process for preparing and conducting effective debriefings outlined in the *Office of the Chief Procurement Officer's Debriefing Guide* is required for every debriefing. The template for debriefings is located on the OCPO Mandatory Templates intranet site at URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) Waivers to the above debriefing policy may be approved by the Deputy Chief Procurement Officer or the Chief Procurement Officer upon receipt of a suitable justification from the CO.

Chapter 2416 – Types of Contracts

2416.000 – Scope of chapter.

This chapter prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition (see FAR Part 16 and HUDAR Part 2416 for related information).

Subchapter 2416.1 – Selecting Contract Types

2416.103 – Negotiating contract type.

(d) The CO will ensure that the rationale for the selection of the contract type is included in the individual acquisition plan (see Handbook 2407.105) and addresses all the requirements of FAR 16.103(d). If during the award process, the CO negotiates a different contract type from that described in the acquisition plan, the CO must document the rationale for the new contract type.

2416.104 – Factors in selecting contract types.

2416.104-70

To assist in the process of selecting the contract type, a Contract Types matrix can be accessed on the OCPO intranet site.

Subchapter 2416.5 – Indefinite-Delivery Contracts

2416.501-2 – General.

2416.501-270 – Defining supplies and services to be ordered.

Indefinite-delivery contracts are designed to provide flexibility in the quantity of services or supplies to be purchased and the timing of their delivery to the Government. This flexibility does not extend to the type or nature of supplies or services. The work statement or specifications must clearly describe all services and supplies to be ordered.

2416.503 – Requirements contracts.

2416.503-70 – Limitations on requirements contracts.

(a) HUD may not obtain the supplies or services covered by a particular requirements contract from any other source, including in-house performance by Government personnel. To do so would constitute a breach of contract.

(b) The contractor must deliver all ordered products and services covered by the contract up to the maximum quantity specified in the contract. The failure of the contractor to fulfill an order may constitute a breach of contract. In the case of a default, HUD may obtain the needed items

separately from another source. The contract must state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The Contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specific time.

(c) The program office will provide reasonable estimated quantities to be included in HUDAR 2452.216-77, Estimated Quantities – Requirement Contract. The CO will verify that the methodology for developing the estimated and maximum quantities appears reasonable. Should the Government's requirements not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact will not constitute the basis for an equitable price adjustment.

2416.504 – Indefinite-quantity contracts.

2416.504-70 – Establishing minimum and maximum quantities for indefinite quantity contracts.

(a) *Establishing the minimum.* COs will establish a single minimum quantity (expressed in terms of numbers of, or dollar value of, items or services ordered) for the entire ordering period. This minimizes the potential of not meeting a minimum within any stipulated contract period. In the case where the CO is reasonably assured that separate minimums for each contract period can be met, the CO may establish separate minimums for each contract period. Such separate minimums must be based upon sound historical or projected use by the program office.

(b) *Basis for Minimum.* Contract minimums are established based upon previous buying habits of the agency and/or the minimal anticipated usage. Minimum quantities for indefinite quantity contracts (IQCs) must be more than a nominal amount to ensure that adequate consideration has been exchanged for a binding contract to occur. The requesting program office is responsible for providing information needed to establish the minimum. The program office reviews its recent historical usage and/or future trend data to develop a good estimate of the minimum quantity that it is *fairly certain to order* during the period to which the minimum will apply. The CO must document the basis for establishing the minimum in the acquisition plan.

Example: Under a proposed IQC for the review of property appraisals, the program office estimates the total number of appraisal reviews during the ordering period (total anticipated usage) to be 500 reviews. The total anticipated usage is based upon two previous years' requirements for the services. However, the office requests that the CO set the minimum at two reviews because they are afraid that setting it higher may put the program office at risk of having to procure reviews that are not needed.

- First, two reviews would likely not constitute adequate consideration for a binding agreement to occur;
- Second, contractors would likely submit elevated prices based on a superficial minimum;
- Third, firms, otherwise eligible to compete, may elect not to as a result of the low anticipated minimum; they may decide that the volume potential, and thereby profit potential, is too low; or

- Fourth, the awarded contractor may fail to adequately plan, based upon a superficial minimum, thereby increasing performance risk under the contract.

In this case, the CO must challenge the proposed minimum and ask the program office to establish a more realistic minimum based upon total anticipated usage.

(c) *Total estimated usage.* The program office will also provide its best estimate of its total anticipated usage under the contract. This estimate is provided in the solicitation to give offerors an idea of how much work may be available under the contract so they may adequately price the effort or make an informed decision whether to pursue the contract and so as to not create unreasonable expectations that the maximum quantity will be ordered. This estimate is not the maximum.) Comparison of the total anticipated usage with the proposed minimum quantity is a good indicator of whether the proposed minimum is too low. The CO will include the estimated anticipated usage in the solicitation, normally in Section B, to be used in evaluating.

(d) *Minimum limitations on individual orders.* COs will use FAR clause 52.216-19, Order Limitations, to establish minimum quantities per order or per series of orders. If the requesting office has a need for less than the established minimum, HUD is not required to purchase the supplies or services from the contractor. The practical application of this will be rare. In most cases, the minimum quantity specified in the clause for individual orders will be one item or a very low dollar amount.

(e) *Establishing maximums.* The total maximum (expressed in terms of numbers of, or dollar value of, items or services ordered) must be stated in the solicitation and the contract. Normally, maximum quantities will be established for the entire contract ordering period but may be established for individual ordering periods under a contract (*e.g.*, if the IQC establishes a base ordering period and option periods). The maximum becomes the greatest amount that may be ordered within the scope of the contract.

(f) *Basis for Maximum.* Reasonable maximum quantities are based upon the program office information about its historical usage of the products or services or other trend data to project the upper limit of their needs during the period applicable to the maximum. As with minimums, contracting personnel must question unreasonably high or low maximums. The CO must document the basis for establishing the maximum in the acquisition plan.

(g) *Contract-specific maximum.* A separate maximum quantity must be established for each contract. A single maximum quantity may *not* be established for a class or group of products or services to be obtained under multiple or sequential contracts. When awarding multiple indefinite delivery/indefinite quantity (IDIQ) contracts, each contract must have its own established maximum based upon its unique terms and conditions.

(h) *Maximum limitations on individual orders.* For IQC contracts, COs must establish maximum limits on the quantities that the contractor must provide under a single order or a series of orders placed within a specified time period. These limits protect contractors from having to fulfill unreasonably large or frequent orders. The specific limits are inserted in the FAR clause 52.216-

19, Order Limitations. The limits may be established in the solicitation or be negotiated during the award of negotiated procurements.

2416.505 - Ordering.

2416.505-70 - Ordering.

(a) *Delivery vs. task orders.* There are two types of orders that may be issued against indefinite delivery contracts; delivery and task orders. Delivery orders are used for supplies. Task orders are used for services.

(b) *Methods.* The contract must specifically authorize the methods to be used. Contract Specialists will consult with program offices in determining the appropriate ordering methods and state the method(s) (such as in writing, orally, or by electronic medium) in the contract using HUDAR clause 2452.216-78, Ordering Procedures.

(c) *Order contents.* FAR 16.505 specifies the minimum information that must be included in all applicable orders.

(d) *Ordering officials.* A CO will place orders unless the CO has delegated authority to do so to other personnel. The CO may delegate the authority to qualified personnel (e.g., Contract Specialists). The CO will designate ordering officials in HUDAR clause 2452.216-78, *Ordering Procedures*. Ordering officials may only place orders within the limits of their delegated authority (e.g., dollar threshold, particular services). Personnel other than contracting personnel (e.g., COR) may serve as ordering officials, but their authority will be limited to ordering pre-priced items (i.e., the prices for the items are stated in the contract's pricing schedule).

2416.505-71 - Fair Opportunity and Selection under Multiple Award IQCs.

Generally, multiple awards are preferred to promote competition at the task order level. There are exceptions for advisory and assistance services. COs must determine *during the contract planning process* if the use of multiple awards is appropriate and document their determination in the contract file. FAR 16.504 provides detailed requirements to ensure fair opportunity procedures are incorporated into the solicitation and contract and are met under multiple award IQCs. Complete documentation must be retained in the contract file of fair opportunity and selection at the task order level.

2416.505-72 - Monitoring usage.

(a) The CO is responsible for monitoring indefinite-delivery contracts to:

(1) Prevent placing orders that exceed:

(i) The maximum quantity in the contract (IQCs and requirements contracts with established maximums);

(ii) The limits specified in clause 52.216-19, Order Limitations (IQC's and requirements contracts); or

(iii) The available funding set forth in the contract.

(2) Determine if the minimum quantity will be ordered (IQC's). In the event that the minimum quantity is not ordered, or it is apparent that it will not be ordered, the CO will take appropriate action (*e.g.*, negotiating a settlement for the unordered portion of the minimum). When the contract contains options for additional ordering periods with separate minimum quantities, and it is clear that the minimums have been set too high, the CO may have to modify the contract to adjust the minimums downward. The CO will consult the COR and obtain a realistic estimate for the minimum quantities in the option periods. It may be prudent to repurchase the requirement and not exercise the option periods.

(b) *Orders placed by contracting personnel.* The CO will ensure that requests for orders to be issued by contracting personnel comply with the policies contained within this chapter. Rejection by the contractor of orders that exceed the maximum or the per-order limitations will be returned to the program office with an explanation as to why the orders may not be placed.

(c) *Orders placed by program personnel.*

(1) Reporting usage. Current HUD delegations of authority permit delegating to qualified program office personnel the authority to place orders under pre-priced indefinite-delivery contracts awarded by the Department. Because of the nature of these contracts, it is critical that the ordering official closely monitor the program office's usage under them. Program ordering officials must be advised at the beginning of the contract, or upon assumption of their ordering duties, of the necessity for timely, accurate monthly reporting and of the consequences of not complying with the requirements of Handbook 2416.503(a) above. A sample format of an *Indefinite Quantity/Fixed Unit Rate Contract Ordering Report* is accessible at the following OCPO intranet site under Indefinite-Delivery Contract Templates, through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/acquisition_templates/acq_templates

(2) The Program Office must provide a copy of each order to the CO.

(d) *Improper ordering and sanctions.* If a program ordering official exceeds their ordering authority or fails to comply with the requirements of Handbook 2416.503(a) above, the CO will notify and advise the ordering official's supervisor of the circumstances. The CO will use judgement in assessing the severity of such violations and seek appropriate remedies with the program office management. In the case of flagrant disregard for, or abuse of the ordering authority or requirements (*e.g.*, repeatedly ordering more work than the contractor is required to deliver under the Order Limitations clause), the CO will rescind the ordering official's authority, notify the ordering official's supervisor and request the program office to nominate another individual. Failure on the part of the program office management to monitor staff that has ordering authority will be referred to the cognizant Office of the Chief Procurement Officer (OCPO) division director for further action.

2416.505-73 – Exceptions.

The CPO or designee must approve requests for exceptions to the above stated procedures.

Chapter 2417 – Special Contracting Methods

2417.000 – Scope of chapter.

This chapter prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including: multi-year contracting; options; and interagency acquisitions (see FAR Part 17 and HUDAR Part 2417 for related information).

Subchapter 2417.2 – Options

2417.202 – Use of options.

2417.202-70 - Justification for including options in contracts.

(a) Contracts for other than IT requirements are limited to a total period of five years including all options unless the CPO approves a longer period in accordance with HUDAR 2417.204. Contract period means the performance period or for indefinite-delivery contracts, the ordering period. In calculating the total contract period, COs:

(1) Must include all options to extend the term of the contract pursuant to FAR clause 52.217-9, Option to Extend the Term of the Contract.

(2) Will not include potential extensions that may later be made pursuant to FAR clause 52.217-8, Option to Extend Services, (if included in the contract). However, COs will obtain the CPO's approval, in writing, before exercising any optional extension of the contract period under clause 52.217-8, Option to Extend Services, if that extension will increase the contract's total duration beyond five years.

(b) Contracts for IT requirements that exceed five years do not require the CPO's approval, however, while the five-year limitation at FAR 17.204(e) does not apply to "information technology contract", if the IT services are obtained through a task order under an IDIQ or GWAC subject to FAR 16.505, and if these IT services meet the definition of "advisory and assistance services" used in FAR 16.505(c) and FAR 2.101, then FAR 16.505(c) limits the "ordering period", "including all options or modifications" to five years. FAR 16.505(c)(2) provides that this five-year limitation does not apply when "[a] longer ordering period is specifically authorized by statute," or the CO or other official designated by the "head of the agency" determines that "the advisory and assistance services" are incidental and not a significant component of the contract.

(c) The requirement for a non-IT contract period longer than five years will be identified at the strategic acquisition planning stage (see Handbook 2407.102-70). The request and justification for a contract period exceeding five years for a non-IT requirement must be provided to the CO during the individual acquisition planning stage. The CO will review the request, and if the CO concurs, will forward it to the CPO for approval. If the CO does not concur on the request, the CO will return it to the initiating office with the reasons and will advise the office as to whether the request may be resubmitted with revisions. The requesting office may appeal the CO's decision to the CPO.

2417.205 – Documentation.

(a) CO's will ensure that a complete justification of the option terms and quantities is prepared and placed in the contract file before the solicitation is issued. The *Preparation Guide for Justification for Use of Option(s) for Increased Quantities*, *Justification for Use of Option(s) to extend Services*, and *Justification for Use of Option(s) to Extend the Term of the Contract* templates may be accessed on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2417.206 – Evaluation.

(b) COs must prepare and obtain approval of any determinations to not evaluate options (see FAR 17.206(b)). The determination must be approved at one level above the CO. The CO must provide the determination to the approving official sufficiently in advance of issuing the solicitation to permit a full review. COs will not issue the solicitation unless and until approval has been obtained.

2417.206-70 - Evaluation of FAR clause 52.217-8, Option to Extend Services.

(a) Unless it is determined not to be in the Government's best interest in accordance with FAR 17.206(b), offers will be evaluated by adding the total price for all options to the total price for the basic requirement. If FAR clause 52.217-8, Option to Extend Services, is included in this solicitation, add the following language: For purposes of evaluating the price of exercising the potential 6-month extension of services using FAR clause 52.217-8, Option to Extend Services, 50% of the final option year (six months) value will be added to the total proposed amount for evaluating pricing only. This amount will not be included in the total aggregate value of the resulting contract. This addition is for price evaluation purposes only.

(b) After the contract has been awarded, the rates for the period of performance awarded pursuant to FAR clause 52.217-8, Option to Extend Services, may be adjusted only as a result of revisions to prevailing labor rates.

2417.207 – Exercise of options.

(a) A contract's option clause will specify the date by which an option must be exercised. The CO must establish an e-mail notification in the acquisition management system for all option periods to ensure timely exercising of option periods. The requisition for an option must be made with enough lead-time to permit preparation and issuance of a timely notice of intent to exercise the option and issue the option modification before the effective date of the option. No contract option may be exercised after the contract has ended.

(1) The program office will provide the CO with a notice of its intent to exercise an option no later than 45 days before the notice of intent to exercise the option must be provided to the contractor. The program office will also submit a requisition for options through the acquisition management system no earlier than 60 days, but no later than 45 days before the option is to be exercised. The program office's notice of intent will include the following:

(i) Funds are available;

(ii) The requirement covered by the option fulfills an existing Government need; and

(iii) The contractor's performance on this contract has been acceptable, *e.g.*, received satisfactory CPARS ratings and a draft CPARS report has been accomplished.

(2) The COR will keep a record of the due dates (*e.g.*, tickler file) for notices of intent to exercise each option for which the COR is responsible.

(f) The CO's written determination that exercise of an option is the most advantageous method of fulfilling the requirement will address the factors set forth in FAR 17.207(c), (d), and (e) and be based on supporting information provided by the COR. The CO will ensure that sufficient Market Research is performed and documented on the *Market Research Template* Report Part 3 located on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

When completed, the Market Research must be maintained within the acquisition management system. The CO will ensure that an analysis sufficient to support the determination is completed before providing the contractor with either a preliminary notice of intent or the notice of exercise (see FAR 17.207(a)). The analysis must also be completed far enough in advance of the end of the contract's performance period to allow the program office and OCPO to pursue appropriate alternative approaches with minimal impact to the program or project in terms of technical, cost, or schedule risk if the analysis concludes that the best course of action is to not exercise the option. The CO's *Determination to Exercise Option* template can be accessed on the OCPO intranet site listed under the Option Templates through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(g) The CO will exercise options unilaterally by written contract modification (Standard Form (SF) 30) in accordance with the notice and exercise periods, and any other limitations stated in the contract. Contractors will not be asked or required to sign unilateral option modifications. To do so might create the appearance that the contractor was agreeing to changed contract terms and conditions (see Handbook 2417.207-70 below). The CO will insert the following text in block 13.D of the SF-30:

“Unilateral – Exercise of Option in accordance with [*insert option clause number and title*].”

2417.207-70 – Unilateral right to exercise.

(a) The Government may lose its right to unilaterally exercise an option if any of the contract terms and conditions governing the option are not met including:

- (1) The CO's failure to issue a timely preliminary notice of intent to exercise an option, if the option clause requires such notice;
- (2) The CO's failure to exercise the option within the time period stated in the option clause; or
- (3) Making changes to options except by the proper use of the contract's Changes clause.

(b) If the Government loses its unilateral right to exercise an option, the CO must seek to obtain the contractor's agreement to the option terms and exercise the option bilaterally. If the contractor does not accept the original option price and/or delivery terms, the CO may renegotiate the price and/or delivery terms but may not make changes outside the scope of the contract. The contractor must submit a written justification for any proposed price increase or change to the original delivery terms. The CO must document any negotiated changes in either price or terms of the option period and provide justification for those changes. The documentation for the change must be maintained in the acquisition management system. (Note: The CO will obtain cost or pricing data when the total pricing adjustment – either upward or downward of the contract price - meets the threshold for cost or pricing data submission in FAR 15.403-4.)

(c) After the contract expires, option periods cannot be exercised and a new contract must be executed if services or products are still required.

2417.207-71 – Options effective in the next fiscal year.

In accordance with FAR 32.703-2(a), the CO may exercise an option that is properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes FAR clause 52.232-18, Availability of Funds. Note the limitations on the use of this authority set forth in FAR 32.703-2(a).

2417.207-72 – Options for severable services crossing fiscal years.

In accordance with FAR 32.703-3 and HUDAR 2432.703-3, the CO may exercise an option under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the option does not exceed one year. Funds made available for the option in the year in which it is exercised may be obligated for the entire amount of the option.

2417.207-73 – Options to extend services.

(a) COs are ultimately responsible for ensuring that individual acquisition planning is completed early in the acquisition process and for managing the entire acquisition process so that new awards are timely. Therefore, COs must actively engage with integrated acquisition teams (IATs; see Handbook 2407.102-72) and program office customers throughout the acquisition process to ensure that any unforeseen delays may be dealt with promptly. COs will monitor active contracts

to ensure that replacement procurements for recurring or continuing services are planned and executed well in advance of the expiration of those contracts. Therefore, the determination required by FAR 17.207(c) and the justification required by FAR Subpart 6.3 may not be based on delays that resulted from the CO's failure to meet these responsibilities.

(b) FAR clause 52.217-8, Option to Extend Services, may only be used in contracts for recurring or continuing services.

(c) In accordance with FAR 17.202, the CO must justify the inclusion of FAR clause 52.217-8, Option to Extend Services, in the individual acquisition plan (IAP) for the contract prior to review. The justification must include the facts that the CO used as the basis for the clause's inclusion. The CO is responsible for justifying the need for the clause.

(d) In accordance with FAR 17.206, the CO will evaluate any options to be exercised pursuant to FAR clause 52.217-8, Option to Extend Services, at time of initial contract award and will set forth the pricing of the options in the contract. In order to meet the Competition in Contracting Act requirements, COs must require offerors to submit pricing for the services that would be performed under any extension made pursuant to FAR clause 52.217-8, Option to Extend Services, with their original proposal and evaluate the pricing as part of their overall evaluation for award.

(e) Before exercising any option pursuant to FAR clause 52.217-8, Option to Extend Services, the CO must complete the determination required at FAR 17.207(c) including a detailed description of the specific events or circumstances that created the requirement for an extension of services and an explanation of why the events or circumstances were beyond the CO's control. This determination must be approved by the applicable ACPO.

(f) If the prices associated with an option exercised under FAR clause 52.217-8, Option to Extend Services, were not evaluated at time of award or the prices were not set forth in the contract, the CO must prepare a Justification for Other than Full and Open Competition (J&A; Form HUD-24012) as required by FAR Subpart 6.3, citing the applicable statutory exception to full and open competition. The J&A must be approved prior to exercising the option using FAR clause 52.217-8, Option to Extend Services.

(g) COs may only exercise options under FAR clause 52.217-8, Option to Extend Services, at the conclusion of the contract, pending award of a successor contract. COs will not exercise any options under the clause when it is expected that an impending option to extend the contract under FAR clause 52.217-9, Option to Extend the Term of the Contract, will be exercised. Exercising FAR clause 52.217-8, Option to Extend Services, when remaining options are available under FAR clause 52.217-9, Option to Extend the Term of the Contract will render any remaining options void.

(h) COs may only extend contracts for a period of time that available funding will cover at the rates set forth in the contract.

(i) COs may not modify contracts to change the scope, or pricing for an option exercised under this clause to accommodate available funding. COs may not modify contracts to change their scope during any extension made under FAR clause 52.217-8, Option to Extend Services.

(j) COs may not modify contracts to add FAR clause 52.217-8, Option to Extend Services, or renegotiate contracts to provide for an extension. Exercise of any option, including an extension under FAR clause 52.217-8, Option to Extend Services, is a unilateral right of the Government. The contractor's signature on the contract document indicates the contractor's acknowledgement and agreement with the Government's unilateral right under all option clauses included in the contract. The Government advises offerors of these rights to exercise options by inclusion of all applicable option clauses in the solicitation as required by FAR 17.203(a). Therefore, modifying a contract to add the clause constitutes a sole source contract and requires the justification required by FAR Subpart 6.3 (see Handbook 2406). In addition, Handbook 2401.7001(c) prohibits modifying contracts to add options that would extend the contract to circumvent the Chief Procurement Officer's approval of contracts extending beyond five years or to avoid the requirements of FAR Subpart 6.3.

2417.207-74 – Changes in contract requirements.

(a) Options may be exercised only under the terms (*e.g.*, prices, work description, period of performance) set forth in the contract for the option.

(b) Prior to exercising an option, the program office may determine that the contract requirements as defined in the option no longer meet the Government's needs. For example, the program office may no longer need the products or services. If the program office decides that it has no need for the products or services, the CO does not exercise the option, and the contract ends.

(c) If the program office still needs the products or services but must make changes to them, the CO will proceed with a:

(1) bilateral agreement (both the government and the contractor must mutually agree to the change) under FAR clause 52.212-4, Contract Terms and Conditions – Commercial Items, if the contract is commercial in nature, or

(2) unilateral modification (the government imposes the change and the contractor must comply but is entitled to equitable adjustment for the change) under FAR clause 52.243-1, Changes—Fixed-Price, 52.243-2, Changes—Cost-Reimbursement, 52.243-3, Changes—Time-and-Materials or Labor-Hours, 52.243-4, Changes, for demolition contracts, 52.243-5, Changes and Changed Conditions, for construction contracts, 52.243-6, Change Order Accounting, for research and development contracts for noncommercial products and services.

(d) In the event of changes to the contract near the time for exercising an option, it is very important that the contract actions be taken in the proper sequence so that the government's rights are maintained. Failure to do so may result in the government waiving its rights in future dealings with the contractor and may have far-reaching repercussions. Therefore:

(1) If there is sufficient time prior to expiration of the contract, the following represents the sequence of contract actions:

- (i) First, the CO will issue the change order modification (bilaterally for commercial contracts, unilaterally for non-commercial contracts).
- (ii) If the change order modification is issued to a commercial contract, the CO will negotiate equitable adjustment with the contractor for the change and definitize the agreement on the same bilateral modification that contains the change order.
- (iii) If the change order is issued to a non-commercial contract, the CO will negotiate equitable adjustment with the contractor for the change after issuing the unilateral change order modification. The equitable adjustment is definitized via a bilateral modification.
- (iv) Finally, in both situations, the unilateral modification exercising the option is issued.

(2) If there is insufficient time to issue the change order and negotiate any needed equitable adjustment before the option's exercise due date, the CO will proceed as follows:

- (i) First, the CO will issue the change order modification:
 - (A) Bilaterally for commercial contracts and only after receiving written agreement from the contractor mutually agreeing that the equitable adjustment will be negotiated after the option has been exercised by the government.
 - (B) Unilaterally for non-commercial contracts.
- (ii) In both situations, the unilateral modification exercising the option is issued.
- (iii) In both situations, equitable adjustment is then negotiated with the contractor and definitized via a bilateral modification.

(3) If the contract cannot be changed under the authority of its Changes clause or other applicable clauses to meet the Government's revised needs, the CO will not exercise the option. The new requirement will have to be met via a new procurement.

2417.208 – Solicitation provisions and contract clauses.

(f) COs will not use FAR clause 52.217-8, Option to Extend Services, in contracts for other than recurring or continuing services.

2417.208-70 - Standard Language for Option Clauses.

FAR 17.208 permits tailoring any of the prescribed option clauses as needed to meet the needs of the specific contract. Standard versions for use in HUD contracts have been developed for maximum clarity with regard to stating the preliminary notice and exercise periods. Contracting personnel may not further tailor the language unless approved by their ACPO and documented in the contract file. The HUD modified version of FAR clause 52.217-8, Option to Extend Services (Nov 1999) and FAR clause 52.217-9, Option to Extend the Term of the Contract (Mar 2000) are located in the acquisition management system clause database listed under FAR Deviations. These clauses are as follows:

As prescribed in FAR 17.208(f), insert the following clause in solicitations and contracts for services when the inclusion of an option is appropriate (see FAR sections 17.200, 17.202, and 37.111):

52.217-8 -- Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor no later than 10 days prior to the expiration of the contract.

(End of Clause)

As prescribed in FAR 17.208(g), insert the following clause in solicitations and contracts when the inclusion of an option is appropriate (see FAR 17.200 and 17.202) and it is necessary to include in the contract any or all of the following: (1) A requirement that the Government must give the contractor a preliminary written notice of its intent to extend the contract; (2) A statement that an extension of the contract includes an extension of the option; (3) A specified limitation on the total duration of the contract:

52.217-9 -- Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor no later than 30 days prior to the expiration of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed the period of time set in the Schedule except that extensions pursuant to FAR 52.217-8 permit the duration to extend up to 6 months beyond the stated limit.

(End of Clause)

2417.208-71 – Continuity of Services clause.

FAR clause 52.237-3, Continuity of Services, provides for phase-in phase-out services by the incumbent contractor for a period of up to 90 days. However, this is not an option clause and will not be used as one. It does not permit the CO to add optional periods or to add new work to the contract (see Handbook 2437.110, FAR 37.110, and FAR clause 52.237-3, Continuity of Services). By the language of the clause, the Government is committing to reimburse the contractor for all reasonable costs. A better strategy would be to negotiate a fixed price arrangement to avoid disputes over what costs are reimbursable.

2417.208-72 – Options under task orders.

(a) Normally, task orders should not include options to extend the term of the order. New or additional work must be obtained through separate orders. In some cases, task orders, including task orders issued under GSA Schedule contracts, may include options for increased quantity or options, most notably for work that builds upon work performed under the basic order.

(b) Before issuing any order that contains options, the CO will ensure that the contract under which the task order will be issued contains the appropriate option clause and will verify that the period of the contract is sufficiently long to permit the exercise and completion of any options.

2417.208-73 - Options under indefinite-quantity contracts (IQCs).

(a) IQCs may contain optional ordering periods. IQCs may have an initial period of greater than one year, but the minimum amount must be obligated at the time of initial award. If additional option periods are included, it is recommended that contract minimums be applied to the base period only. However, these optional periods may contain separate minimum quantities to be ordered during each period. Each period should then be treated the same as the base award, with the minimum quantities obligated at the time of exercising the option. If the minimum quantity is not met for any given ordering period, the CO must negotiate a settlement with the contractor as the Government is liable for the minimum quantity as stated in the contract.

(b) The authorized ordering official is responsible for tracking the orders placed under an IQC. The CO, in concert with the COR, will also monitor ordering to see if established minimums will be met and to ensure maximums will not be exceeded. Whenever it is clear that the minimums for upcoming option periods have been set too high, they will be renegotiated and the contract modified to reflect the new minimums. If the contract is in danger of reaching its maximum value, the CO will initiate appropriate action with the program client.

Subchapter 2417.5 – Interagency Acquisitions

2417.502 – Procedures.

2417.502-70

Procedural guidance concerning the use of interagency acquisitions is contained within an Acquisition Instruction issued by OCPO and can be found on the OCPO intranet site.

Chapter 2418 – Emergency Acquisitions [RESERVED]

Chapter 2419 – Small Business Programs

2419.000 – Scope of chapter.

This chapter prescribes policies, standards, and procedures pertaining to small business acquisitions (see FAR Part 19 and HUDAR Part 2419 for related information).

2419.001 – Definitions.

As used in this chapter:

“*Business Utilization Development Specialist (BUDS)*” means the HUD employee located within the Office of the Small and Disadvantaged Business Utilization (OSDBU) who supports the Director in performing the functions described at FAR 19.201(d) and supports OCPO in performing the functions described at HUDAR 2419.201(e). The BUDS are commonly referred to as Small Business Specialists (SBS). For the purposes of this handbook, a BUDS will be referred to as an SBS.

Subchapter 2419.2 – Policies

2419.201 – General policy.

(c) *OCPO small business liaisons*. The CPO designates individuals within OCPO to serve as liaisons between the small business community, OSDBU, SBA, and OCPO. Normally, Small Business Liaisons are appointed only in OCPO offices located within the Field Contracting Operations where there is no OSDBU presence. The liaisons’ duties include:

- (1) Representing HUD at local events that promote or provide information on HUD’s and the Federal Government’s small business contracting programs (*e.g.*, conferences or small business fairs);
- (2) Serving as a principal point of contact for small businesses interested in contracting with HUD;
- (3) Assisting small businesses by:
 - (i) Directing firms to the appropriate program office staff;
 - (ii) Helping firms identify the types of services they provide that HUD purchases or would be likely to purchase; and
 - (iii) Assisting the program offices and COs in obtaining information about small business firms;
- (4) Responding to questions about HUD’s small business acquisition activities, policies, and procedures, and referring inquiries to the HUD OSDBU, the contracting office, or other entity as appropriate; and

(5) Referring local SBA inquiries regarding small business acquisition and contracts to the appropriate HUD entity (*e.g.*, OSDBU or responsible CO).

(d) *OSDBU*. In accordance with FAR 19.201(d) and HUDAR 2419.201(d), the Director of OSDBU is responsible for the administration of HUD's small business programs and for performing all functions and duties prescribed in FAR 19.201(d).

(10) *Small Business Administration Coordination Record*. COs will use the standard Small Business Administration Coordination Record template when coordinating the dissolution of set-asides with the SBA. The template is available on the OCPO intranet site in Small Business Resource and can be accessed through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2419.202 – Specific policies.

Requirements exceeding the simplified acquisition threshold will be provided to OSDBU for review and identification of opportunities for small business participation (*e.g.*, set-asides). OSDBU will review all annual strategic acquisition plans (see Handbook Chapter 2407 to identify contracting opportunities for small businesses and requirements that may be appropriate for meeting HUD's established small business contracting goals.

2419.202-2 – Locating small business sources.

OSDBU will assist COs in identifying small business sources.

2419.202-270 – Small business size.

Upon receipt of proposals, the CO must check System for Award Management (SAM) to confirm a potential awardee's small business size status for the NAICS code selected for the acquisition. Firms may indicate their size when completing the small business size representation for a specific acquisition, and that certification will determine if they are small. Furthermore, the firm's size may change from one solicitation to the next given the firm's current status. The result is that a firm's status may be different in SAMS when it submits an offer. The FAR provision 52.204-8, *Annual Representations and Certifications*, which must be included in all solicitations for other than commercial items, permits firms to indicate any changes to their status. The FAR provision 52.212-3, Offeror Representations and Certifications – Commercial Items, is utilized for Commercial items.

2419.203 – Relationship among small business programs.

2419.203-70 – Selecting small business contracting programs.

(a) *Choosing the small business program*. In accordance with the limits set forth at FAR 19.203, COs may use their best judgement in selecting from among the various small business programs authorized by FAR Part 19 to fulfill HUD's acquisition requirements.

(b) *Acquisition planning and market research.* COs will consult with the OSDDBU SBS when preparing individual acquisition plans (see Handbook 2407.102-71) to ensure that HUD's attainment of its established goals for each of the small business programs is considered when selecting the small business program. COs will endeavor to use small business programs in which HUD needs greater participation to meet its annual goal, provided that market research (see Handbook 2410.002) indicates sufficient qualified sources exist within the program.

(c) *Documenting selection.* COs will document the rationale for the small business program selected in the individual acquisition plan and include supporting documentation of the market research and consultation with OSDDBU.

Subchapter 2419.7 – The Small Business Subcontracting Program.

2419.705 – Responsibilities of the CO under the subcontracting assistance program.

2419.705-2 – Determining the need for a subcontracting plan.

(a) Prior to deciding that no subcontracting opportunities exist, the CO must coordinate with the OSDDBU SBS and consider the information provided. The determination must be approved by the person one level above the CO.

(b) To determine whether the value of a proposed indefinite-delivery contract containing option periods meets the threshold for the requirement of a subcontracting plan, the CO will obtain from the program office an estimated total quantity to be ordered in the base and each of the option periods. The CO will use the value of this estimated total quantity to make the determination. The CO will obtain this information when developing the individual acquisition plan and document it in the plan (see Handbook 2407.105). Additional information useful for developing a subcontracting plan, *e.g.* HUD Small Business Goals and Subcontracting Plans and Subcontracting Reporting Training PowerPoint, is available on the OCPO intranet site listed in Small Business Resources.

(c) Subcontracting plans should be obtained at the time of proposal submission. Separate subcontracting plans for individual orders placed under an indefinite-delivery contract are prohibited (see FAR 19.705-2(e)), and the CO will not request them. When an order under an indefinite-quantity or requirements contract meets the criteria in FAR 19.702 for a plan and causes the value of the contract to exceed that used for the existing subcontracting plan, the existing subcontract plan will be revised to add the goals associated with those in the order.

2419.705-70 – Subcontracting plan review process.

(a) The CO will review proposed subcontracting plans in accordance with FAR 19.705-4 for compliance with the plan requirements of FAR 19.704. If the plan is lacking any of the required elements required by FAR 19.704 or is otherwise deficient, the CO will obtain the missing or additional information before providing the plan to the OSDDBU for review.

(b) After the CO completes the review and obtains any missing or additional information from the contractor, the CO will provide a copy of the plan to the responsible SBS in OSDDBU for review. The OSDDBU SBS will provide any comments to the CO within 5 business days after receipt of the plan. The *Small Business Subcontracting Plan Transmittal Memorandum* template may be accessed at the following OCPO intranet site:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(c) After the CO receives the OSDDBU SBS's comments, the CO will negotiate any needed revisions with the contractor. If the SBS does not respond within 5 business days after receipt of the plan, the CO may proceed to negotiate any needed plan revisions with the contractor or approve the plan as submitted. If the SBS requests additional time, the CO will extend the comment time by up to 5 additional business days.

(d) In addition to the guidance provided in FAR 19.705-4, the CO will use the following information in developing a pre-negotiation position and in negotiating the final subcontracting plan before executing the contract action:

(1) HUD's current annual small business subcontracting goals located on the OCPO intranet site.

(2) Historic subcontracting opportunities, if any, for the requirement being fulfilled (*e.g.*, data from subcontracting plan reports submitted under similar contracts); and

(3) The potential opportunities under the immediate requirement.

(e) The CO will obtain the concurrence of the OSDDBU when the negotiated subcontracting plan goals are below the Department's goals. The CO must document the reason for accepting the lower goal.

(f) The CO will ensure that copies of the final plan and the applicable contract document are provided to the SBS in OSDDBU and will document the contract file regarding distribution.

(g) The SBS will maintain files containing subcontracting plans and reports during the life of the contract under which the plans and reports were made. Upon completion of the contract, the SBS will provide the CO with any information contained in the reports or plan as requested by the CO.

2419.706 – Responsibilities of the cognizant administrative CO.

2419.706-70 – Monitoring and evaluating subcontracting performance.

(a) In addition to the post-award requirements set forth in FAR 19.706:

(1) The SBS will promptly review all Individual Subcontracting Reports (ISRs) and Summary Subcontract Reports (SSRs), in accordance with FAR clause 52.219-9, Small Business Subcontracting Plan, to assess the contractor's progress in meeting its planned

goals. The reports are accessible in the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>.

(2) The CO will consult with the SBS before taking any action relative to deficient performance by the contractor regarding the goals.

(3) The CO will coordinate all correspondence related to contractor noncompliance with an established plan, findings of breach of contract, and the assessment of any related liquidated damages pursuant to FAR 19.705-7 with the SBS and the OSDBU prior to issuance to the contractor.

Subchapter 2419.8 – Contracting with the Small Business Administration (The 8(a) Program)

2419.800 – General.

2419.800-70 – Partnership agreement.

Pursuant to section 8(a) of the Small Business Act (Public Law 95-507), the Small Business Administration (SBA) has the authority to enter into partnership agreements (PA) whereby the parties to an agreement may make 8(a) contract awards directly to 8(a) program participants after the SBA accepts an offer to contract. Any such agreement between HUD and the SBA resides on the OCPO intranet site.

2419.803 - Selecting acquisitions for the 8(a) Program.

2419.803-70 – Conducting market research to identify 8(a) firms for sole source awards.

(a) The CO, with the advice of the program office, will select the 8(a) firm to be considered for contract awards below the competitive 8(a) threshold. The program office may independently identify 8(a) firms for the CO's consideration.

(b) In accordance with FAR 19.803 and the SBA regulation at 13 CFR 124.503, the CO may consider any information concerning the firms' capability to meet the requirements of a proposed contract, including the factors set forth at FAR 19.803(a) and information on the firms' past or current performance.

(1) In accordance with 13 CFR 124.503:

(i) The CO may conduct, or authorize the program office to conduct, market research in the form of *informal* assessments of several 8(a) firms' capabilities to perform the proposed contract. Such informal assessments to determine a firm's capability may include, but are not limited to:

(A) Review of corporate capability statements;

(B) Oral presentations by the 8(a) firms on their capabilities;

(C) Review of references from current and past clients, both commercial and Government; and

(D) Review of past performance information available from PPIRS.

(ii) When assessing the capability of firms during market research, HUD personnel will not:

(A) Conduct any formal technical evaluation of 8(a) firms (*e.g.*, rating and ranking offers);

(B) Provide a solicitation or work statement to any 8(a) firms being considered; or

(C) Request or require any 8(a) firm to submit a proposal.

(2) For 8(a) firms with current or prior HUD experience, the program office must provide to the CO:

(i) The contract number(s) of the contract(s) that a firm is currently performing or has performed and a brief description(s) of the work completed; and

(ii) An assessment of the 8(a) firm's performance.

(3) The CO will include documentation of the informal assessment in the contract file.

2419.804 – Evaluation, offering, and acceptance.

2419.804-1 – Agency evaluation.

(f) In accordance with FAR 19.804-1(f), the CO will make an assessment of the selected 8(a) contractor's capability to perform the requirements of the proposed contract as described in Handbook 2419.803-70. The CO may delegate the assessment to the program office.

2419.804-170 – Split requirements.

COs must ensure sole source 8(a) requirements are not split to avoid competition. Any request for an 8(a) contract with a total award value near the sole source award threshold for a total period of performance of less than 5 years must be approved by the cognizant ACPO before the CO proceeds.

2419.804-2 – Agency offering.

2419.804-270 – *Small Business Administration Coordination Templates.*

(a) The *Small Business Coordination Record* Template must be utilized to notify the SBA of the extent of its plans to place an 8(a) contract. This template can be accessed through the OCPO website at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(b) The Small Business Coordination Record must be maintained in the official contract file within the acquisition management system.

2419.808 - Contract negotiations.

2419.808-170 - Request for proposal (RFP), Sole Source.

After a sole-source 8(a) contractor has been identified based upon market research, the CO will issue a RFP, including a request for a technical proposal, if appropriate, to evaluate the contractor's technical approach and other factors required to establish the basis for negotiating a fair and reasonable price.

Chapter 2420 [RESERVED]

Chapter 2421 [RESERVED]

Chapter 2422 – Application of Labor Laws to Government Acquisitions

2422.000 – Scope of chapter.

This chapter prescribes policy and procedures for implementing pertinent labor laws (see FAR Part 22 and HUDAR Part 2422 for related information).

Subchapter 2422.1 – Basic Labor Policies

2422.103 – Overtime.

2422.103-3 – Procedures.

(c) Post-award contractor requests for overtime will comply with the requirements of FAR Subpart 22.1 and Handbook Subchapter 2422.1.

2422.103-4 – Approvals.

(a) The CO will prepare a written determination for approval of the use of overtime (see FAR 22.103-4). The CO will obtain the concurrence of the program office on the need for overtime and the appropriateness of the labor for which overtime is proposed. The determination will be approved at a level above the CO.

(b) The CO will prepare a written determination for approval of any overtime amount to be included in FAR clause 52.222-2, Payment for Overtime Premiums. The determination must be approved one level above the CO.

(e) All approvals will be contract-specific and may not be used to approve overtime for multiple contracts or for contractors in general. Approvals may be limited to specific tasks, activities, or other portions of contracts.

Subchapter 2422.13 – Equal Opportunity for Veterans

2422.1302 – Policy.

COs will not award contracts or exercise options (see Handbook Subpart 2417.2) exceeding the simplified acquisition threshold to offerors and contractors who have not complied with the VETS-100 reporting requirements set forth at FAR 22.1302.

2422.1304 – Procedures.

Before awarding new contracts or exercising options to existing contracts, COs will verify that proposed contractors have filed current VETS-100 reports by either method prescribed at FAR 22.1304. COs and contract specialists will document the results of their queries regarding contractor compliance by printing the results of their search at the VETS-100 website or the email

confirmation received from the VETS-100 Reporting Systems and including either document in the official file in the acquisition management system.

2422.1305 – Waivers.

(a) COs will submit all requests for waivers to the requirements of FAR Subpart 22.13 to the CPO for approval. The CPO may delegate approval authority, but not below the level of the ACPOs.

(b) Requests for waivers must be submitted through the responsible ACPO and will include a complete Determination and Findings which describes the specific requirement to be waived and the facts that support the need for the waiver.

Chapter 2423 – Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

2423.000 – Scope of chapter.

This chapter prescribes policies and procedures supporting the acquisition of products containing recovered materials (see FAR Part 23 for related information).

Subchapter 2423.4 – Use of Recovered Materials and Biobased Products

2423.404 – Agency affirmative procurement programs.

It is the policy of the Department to procure products containing recovered materials to the greatest extent practicable in accordance with all applicable Federal statutes, regulations, policies, and other guidelines. In accordance with FAR 23.404, the CPO has issued separately the Department's *Affirmative Procurement Plan – Purchasing Environmentally Preferable Products and Services at the Department of Housing and Urban Development*. In addition, the CPO, Chief Information Officer and Chief Human Capital Resources Officer have issued jointly an *Electronics Stewardship Program and Implementation Plan*, which sets forth the Department's policy on, and requirements for, the purchase of electronic equipment. Both are accessible at the OCPO intranet site.

2423.470 – Justification for material content.

Program offices must provide the contracting officer with a written justification when requesting purchases of applicable items having a recovered material content lower than that currently in effect under the Department's recovered material program. The program office will provide the justification prior to initiating a requisition in the acquisition management system.

Chapter 2424 – Protection of Privacy and Freedom of Information [RESERVED]

Chapter 2425 – Foreign Acquisition [RESERVED]

Chapter 2426 – Other Socioeconomic Programs [RESERVED]

Chapter 2427 – Patents, Data, and Copyrights [RESERVED]

Chapter 2428 – Bonds and Insurance [RESERVED]

Chapter 2429 – Taxes [RESERVED]

Chapter 2430 – Cost Accounting Standards Administration [RESERVED]

Chapter 2431 – Contract Cost Principles and Procedures [RESERVED]

Chapter 2432 – Contract Financing

2432.000 – Scope of chapter.

This chapter prescribes policies and procedures for contract financing and other payment matters (See FAR Part 32 and HUDAR Part 2432 for additional information). The departmental policy on funds control, including obligations and other financial matters related to contracts, can be found in the Office of the Chief Financial Officer's Administrative Control of Funds Policies Handbook, 1830.2-REV-6 (hereinafter, Funds Control Handbook).

Subchapter 2432.7 – Contract Funding

2432.702 - Policy.

2432.702-70 – The Bona Fide Needs Rule.

(a) The bona fide needs rule is a fundamental principle of appropriation law which has been cited by numerous Comptroller General Decisions. The bona fide needs rule states that funds provided under a one-year appropriation or a multi-year appropriation that expires at the end of the current fiscal year may be obligated only to meet a legitimate need arising in the fiscal year for which the appropriation was made.

(b) The bona fide needs rule applies differently to non-severable and severable services. A non-severable service is a single, unified undertaking or outcome, such as a system or report. An example of a non-severable service is a research project. The need for the project is identified and performance begins in one fiscal year and, in this example, performance continues for 18 months. While the partial results of an incomplete research project are perhaps beneficial in some ethereal sense, the full value of the contract is not obtained until the final study is completed and report produced. In this instance, HUD would obligate current funding for the cost of the entire research project when the requirement is identified and the project begins, even if the appropriated funding to be used expires at the end of the current fiscal year.

(c) Severable services are continuous and recurring in nature. Examples are security and cleaning services; HUD benefits every hour a guard is on duty or a floor is swept. In the general application of the bona fide needs rule, severable services may be obligated only with funds appropriated for the year in which they are performed. Except as discussed below, HUD cannot obligate one-year funds or multi-year funds expiring at the end of the fiscal year for severable services to be performed in the following fiscal year.

(d) The “severable services exception” to the bona fide needs rule adds a limited degree of flexibility but it requires great care to assure it is used lawfully. The basic requirement for the severable services exception is that the new severable services contract or extension must include work that begins in the current fiscal year and continues into the next fiscal year, but the total performance period may last no more than one year. In using this exception, however, beware of a common hazard involving an existing contract that runs through September 30 with a proposed extension that begins on or before that date. The severable services exception does not apply to such contracts because there is no bona fide need for new services in the current fiscal year.

However, it is perfectly lawful to work with the contractor to amend the existing contract to end the performance period before the end of the current fiscal year. There is then a bona fide need for a contract extension for services that begin before the end of the current fiscal year and may continue into the next fiscal year for a total new performance period that may last no more than one year.

(e) The CO is the responsible official for determining if a proposed contract action meets the bona fide need test. Each contract request will be reviewed in light of these principles, and the program office will be advised immediately if its proposed funding plan does not meet such test. The CO will be guided by GAO's Principles of Federal Appropriations Law, Comptroller General Decisions, and HUD legal guidance including the Funds Control Handbook. The CO must consult legal counsel in accordance with the Funds Control Handbook in any case where the fiscal appropriateness of a proposed action is in doubt, including questions about severable or nonseverable services and the bona fide needs rule.

2432.702-71 - Funds obligation.

(a) Basic procedures.

(1) *Definite quantity contracts.* Funds will be obligated by individual orders.

(2) *Requirements contracts.* Funds will be obligated by individual orders.

(3) *Indefinite-quantity contracts.* The CO must obligate a dollar amount equal to the value of the minimum quantity identified in the contract upon execution of the basic contract awards. This requirement may be met by obligating the minimum quantity value on the contract award document or by issuing an order that meets or exceeds the total minimum quantity value concurrent with the execution of the basic contract.

2432.703 – Contract funding requirements.

2432.703-370 - Contract crossing fiscal years.

(a) Indefinite quantity contracts (IQCs) and requirements contracts for services may cross fiscal years, *i.e.*, extend beyond the fiscal year in which they are awarded and performance begins. If they are funded by the annual appropriations, FAR 32.703-2 requires that:

(1) The minimum quantities are certain to be ordered in the initial fiscal year; and

(2) The contract includes the FAR clause at 52.232-19, Availability of Funds for the Next Fiscal Year.

(b) When an IQC or requirements contract spans fiscal years and obligates funds by individual order, orders may not be issued in the new fiscal year until funds become available.

2432.703-371 - Severable services.

(a) FAR 32.703-3 and HUDAR 2432.703-3 permit COs to enter into contracts, exercise options, and place orders under contracts for *severable services* for a period that begins in one fiscal year and ends in the next fiscal year *if* the period of the contract, option or *order* does not exceed one year.

(b) Severable services are continuing and recurring in nature (*e.g.*, security or maintenance services, copier rentals, etc.). A simple test to determine if a service is severable is to ask if the value of the benefit that will have been obtained up until the point when the service is interrupted would be diminished by the fact that the remaining service has not been performed. If the full value will have been provided, the service is severable.

Example: A building maintenance contract is stopped at the end of the fiscal year due to lack of availability of new funds. HUD's building was maintained up to the point that services were stopped for lack of money, and HUD clearly derived the full benefit of the services provided. Therefore, the services are severable.

(c) Under non-severable services contracts and orders (*e.g.*, a study of a HUD program, an appraisal of a multifamily property, the development of a training course), the full value of the services contracted for is not realized until the contract is completed.

Example: A partially completed training course cannot provide full value if left half-finished; the rest of the course must be completed for the partially completed portion to be fully utilized. In this case, the services were nonseverable.

(d) Certain contracts, while not severable because the services acquired are not continuing and recurring in nature, can be subdivided into individual units of nonseverable services called nonseverable increments. Each of these nonseverable increments must individually provide a full benefit to the Department.

Example: A single contract for the development of three related financial systems, but where each individual system, once developed, could operate independently and provide full value to the government once completed, can be subdivided into three nonseverable increments. In this case, each of these nonseverable increments must be fully funded, but the full contract would not have to be fully funded up front. However, from a funds control and financial planning perspective, full funding for the entire project remains the preferred method.

2432.703-372 - Orders.

Orders may also cross fiscal years. Note that FAR 16.501-2(c) permits the use of any appropriate cost or pricing arrangement under FAR Part 16 (*e.g.*, fixed-price, cost-reimbursement, cost-plus-fixed-fee, time-and-materials) in indefinite-delivery contracts. Fixed-price orders must be fully funded when they are placed or if, for severable services, fixed-price orders may be incrementally funded if all conditions of HUDAR 2432.703-1 are met and a deviation or waiver exists. Non-fixed-price orders may be partially funded only *if* the contract contains the FAR clause at 52.232-19, Availability of Funds for the Next Fiscal Year, and specifies the amount of available funds that the contractor may not exceed.

Subchapter 32.9 – Prompt Payment

2432.970 – Invoicing and payment

2432.970-7001 – Requesting payment.

(a) *Billing format.* While most contracts require the submission of an invoice or voucher for payment, some contracts allow for payment to be made in other ways (*e.g.*, directly from property sale proceeds). As a general rule, an invoice is submitted for payment of a firm fixed priced contract whereas a voucher or public voucher is submitted for payment of a cost type contract. The specific requirements for invoice content and submission must be stated in a contract's payment clause. (See HUDAR clauses 2452.232-70, Payment Schedule and Invoice submission (Fixed Price) with deviation and 2452.232-71, Voucher submission (Cost-reimbursement) with deviation.)

(b) *Fixed-Price contracts* (see FAR Subpart 16.2). Invoices must clearly identify the products and services (*e.g.*, by Line Item Number (LIN)) for which payment is requested and the contract price for each. Contractors may not invoice for partial or progress payments unless the contract specifically authorizes them.

(c) *Cost-reimbursement contracts* (see FAR Subpart 16.3). Contractors shall be required to itemize the costs included in the voucher to the degree needed to permit an evaluation of the costs. The level of detail in the breakout may vary by contract.

(d) *Labor-Hour and Time-and-Materials contracts* (see FAR Subpart 16.6). The contractor shall break out labor costs by the number of hours billed for each labor category and by task. Other costs, if allowed, shall be sufficiently itemized by task to permit the COR to assess their reasonableness.

2432.970-7002 – Submission of invoices and vouchers.

(a) The Contractor shall obtain access to the Bureau of Fiscal Service (BFS), Administrative Resource Center (ARC), Invoice Processing Platform (IPP) to submit invoices and vouchers. Instructions, invoicing guidelines, and other valuable resources necessary to utilize IPP are contained on ARC's internet site.

(b) The Contractor shall submit invoices through the IPP with one copy to the CO and one copy to the COR. To constitute a proper invoice, the invoice must include all items required by FAR clause 52.232-25, Prompt Payment for a non-commercial item and FAR clause 52.212-4(i)(2), Prompt Payment, for a commercial item, utilizing FAR Part 12.

(c) In the rare instance that the contractor does not have the capability to access the IPP, *e.g.* not having computer or internet access available, the invoice may be submitted directly to the Bureau of Fiscal Services (BFS). The CO may contact the Accounts Payable Helpdesk listed on the BFS webpage for further instructions.

2432.970-7003 – COR Review of invoices and vouchers.

The COR will review all invoices and vouchers in the IPP to determine that the item(s) was (were) received or the services rendered within 5 business days. If the COR does not review the invoice or voucher within 5 business days, the document will flow to the CO who is designated within the IPP system as the COR back-up. The payment office will not make payment on any request until it has received evidence of the Government's approval of the invoice or voucher.

(a) *Fixed-Price Contracts*. The COR will verify that:

- (1) The price(s) identified on the invoice correspond to the price(s) specified in the contract for items or services being invoiced; and
- (2) All deliverables and services included on the invoice have been inspected and are acceptable.

(b) *Cost-reimbursement contracts*. Unlike fixed-price contracts, vouchered costs are not associated with specific deliverables or priced services. The voucher lists the costs that the contractor has incurred in the performance of the contract during the period covered by the voucher and for which the contractor is seeking reimbursement.

(1) Under cost-reimbursement contracts, the government reimburses the contractor only for incurred costs that are determined to be reasonable. To be determined reasonable, vouchered costs must be:

- (i) Clearly associated with and necessary for work required under the contract;
- (ii) What a prudent business person would pay for the product or service in a competitive marketplace. The COR must determine that the costs are fair in light of the marketplace, if one exists, or by using other standards (*e.g.*, specified labor rates in the contract, amounts HUD paid for comparable items in the recent past, the appropriateness of the labor mix used for the work performed, etc.); and
- (iii) Allowable under the cost principles set forth in FAR Part 31. The CO is responsible for determining if a questioned cost is allowable or not under the cost principles. The COR is responsible for alerting the CO to any suspected or questionable costs in a voucher.

(2) The COR must also determine if unreasonable costs are indicative of performance problems (*e.g.*, the contractor is using inefficient methods or labor mix). If the COR believes that to be the case, the COR will inform the CO of the problems and any proposed remedy the COR believes will correct them. With the concurrence of the CO, the COR will contact the contractor and provide guidance to help the contractor remedy the situation.

(c) *Labor-Hour and Time-and-Materials Contracts*. The COR will:

- (1) Verify that the rates claimed for vouchered labor categories agree with those specified in the contract. Rates for any billed labor that are not specified in the contract are to be questioned and must be determined by the CO to be reasonable;
- (2) Review the number of hours billed for reasonableness in light of the work performed; and
- (3) Review other claimed costs (*e.g.*, materials, travel, etc.) as described in paragraph (b)(1) above.

2432.970-7004 – Correction and revision of invoices and vouchers.

(a) *Proper invoice.* The CO may be responsible for determining whether the invoice or voucher is proper (see FAR 32.905(b) for requirements) and if not, obtaining a revised document that is proper.

(1) *Clerical errors.* In some cases, the invoice or voucher may contain obvious clerical errors (*e.g.*, simple arithmetic mistakes) that the COR may be able to correct by annotating the invoice or voucher after confirming with the contractor.

(2) *Material errors.* Material errors are defined as those errors in the invoice or voucher, such as interest rates inconsistent with the Prompt Payment Act, incorrect labor categories or lack of supporting documentation, which are directly contrary to the terms or conditions of the contract. If the errors are material, then the CO must proceed as follows:

(i) *Invoices.* If the prices contained in an invoice are inaccurate (*i.e.*, not the prices contained in the contract for the invoiced items/services) or the invoice contains discrepancies (*e.g.*, wrong quantity of deliverables invoiced), the CO will notify the contractor to obtain a correct invoice and/or annotate the invoice accordingly.

(ii) *Vouchers.* If the COR cannot determine that the costs shown on an otherwise properly prepared voucher are fair and reasonable (*e.g.*, due to insufficient detail in the breakout), the COR will consult the CO for assistance. As directed by the CO, the COR will request additional information from the contractor as necessary. If the COR cannot determine that costs are fair and reasonable because the voucher is too poorly prepared to decipher (*e.g.*, voucher contains insufficient information, arithmetic errors, illegible writing, etc.), the CO will notify the contractor immediately and obtain a new voucher.

2432.970-7005 – Denial of payments and disputed invoices and vouchers.

(a) The COR does not have the authority to disallow costs or withhold or deny payments without written approval by the CO. The COR must report any proposed denied payments immediately to the CO. The CO will review the COR's findings and determine whether or not payment should be made. If the CO denies a payment in whole or in part, and contractor disagrees with a denial of

payment, the contractor may file a claim under the contract's "Disputes" clause (see FAR Subpart 33.2).

(b) When the COR recommends the CO reject the invoice and deny payment, the COR will provide the CO with the basis for the denial of payment including, but not limited to, the following information:

(1) *Unreasonable costs.* The COR will identify the specific items of cost that are unreasonable and provide the CO with the rationale, including an estimate of what reasonable costs should be; and

(2) *Unacceptable deliverables or performance.* The COR will identify the unacceptable deliverable(s) and/or services for which payment should be denied. The COR will describe what steps have been taken to obtain correction.

Chapter 2433 – Protests, Disputes, and Appeals

2433.000 – Scope of chapter.

This chapter prescribes policies and procedures on protests, disputes and appeals (See FAR Part 33 and HUDAR Part 2433 for additional information).

Subchapter 2433.1 – Protests

2433.102 – General.

2433.102-70 – Reporting and tracking protests.

(a) The CO will report all protests (including size protests under FAR Part 19) promptly to:

(1) The supervisor, ACPO, and DCPO;

(2) Legal counsel within OGC. The CO will obtain legal advice with regard to the response to the protest.

(b) The CO will provide updated reports as necessary to capture significant actions taken with regard to protests. The supervisor will ensure all information on a protest is maintained in the Protest Tracker on the OCPO SharePoint site.

2433.103 – Protests to the Agency.

(d)(3) The CO is authorized to approve or deny agency-level protests against the award of contracts for which the CO is responsible. The CO will obtain legal and the supervisor's review of all protests prior to issuing a decision (see Handbook 2401.7003). All appeals of CO decisions will be processed in accordance with HUDAR 2433.103.

(d)(4) The CPO may delegate the HCA authorities set forth in HUDAR 2433.103(d) to the Deputy CPO on an individual or class basis.

(f)(1) If the CO determines, in accordance with FAR 33.103(f)(1), to award the contract pending resolution of the protest, the CO must provide a written determination and all supporting documentation to legal counsel for review prior to submitting the determination to the HCA for approval in accordance with HUDAR 2433.103(f)(1).

(f)(3) If the CO determines, in accordance with FAR 33.103(f)(3), to not suspend performance of the awarded contract pending resolution of the protest, the CO must provide a written determination and all supporting documentation to legal counsel for review prior to submitting the determination to the HCA for approval in accordance with HUDAR 2433.103(f)(3).

2433.104 – Protests to GAO.

(b) If the CO determines to award a contract pending resolution of a GAO protest, the CO must provide a written determination addressing the items listed in FAR 33.104(b)(1) and all supporting documentation to legal counsel for review and concurrence prior to submitting the determination to the HCA for approval in accordance with HUDAR 2433.104(d). The determination may be in memorandum format. If the HCA approves the determination to award the contract, the CO will place the written approval in the contract file.

(c) If the CO determines to not suspend performance of an awarded contract pending resolution of a GAO protest, the CO must provide a written determination addressing the items listed in FAR 33.104(c)(2) and all supporting documentation to legal counsel for review and concurrence prior to submitting the determination to the HCA for approval in accordance with HUDAR 2433.103(f)(3). The determination may be in memorandum format. If the HCA approves the determination to continue performance, the CO will place the written approval in the contract file.

(h) *Award of costs.*

(6) The Office of General Counsel, Procurement Law Division will handle all negotiations with the law firms for costs and attorney's fees.

Subchapter 2433.2 – Disputes and Appeals.**2433.211 – Contracting officer's decision.**

(a)(2) COs will obtain a legal review (see Handbook 2401.7003) of all decisions regarding claims filed by contractors. The CO will provide legal counsel with access to the contract file in the acquisition management system in addition to the CO's draft decision when obtaining the required legal review. The CO must ensure that the timeframes stipulated by the FAR are met.

(b)(2) The CO will provide updated reports as necessary to capture significant actions taken with regard to the claim. The supervisor will ensure that all information on a claim is maintained in the Claim Tracker on the OCPO SharePoint site.

Chapter 2434 - Major System Acquisition [RESERVED]

Chapter 2435 – Research and Development Contracting [RESERVED]

Chapter 2436 – Construction and Architect-Engineer Contracts [RESERVED]

Chapter 2437 – Service Contracting

37.000 – Scope of chapter.

This chapter prescribes policy and procedures that are specific to the acquisition and management of services by contract (see FAR Part 37 and HUDAR Part 2437).

Subchapter 2437.1 – Service Contracts - General

2437.104 – Personal services contracts.

(e) In cases where a program office indicates that a statutory authority specifically permits the procurement of certain personal services (see FAR 37.104), the Contracting Officer (CO) will obtain legal review and provide the information described in Handbook 2401.7003.

2437.110 – Solicitation provisions and contract clauses.

(c) Certain contract services are considered vital to the Government and must be continued without interruption once the contract ends. When it is expected that the services will be performed by a successor other than the incumbent contractor (either the Government or another contractor), and the Government anticipates difficulties during the transition from the incumbent contractor to the successor, FAR 37.110(c) permits the CO to insert clause 52.237-3, Continuity of Services, in the contract. Among other things, this clause requires the incumbent contractor to provide phase-in and/or phase-out services for up to 90 days after the end of the contract to ensure a smooth transition to the successor. This is not an option clause as defined in FAR Subpart 17.2. COs must understand that the period of performance established through the use of this clause is not a continuation of existing contract services, but is only to provide a transition period for contract phase-in or phase-out activities. The period is initiated upon the expiration of the current contract period of performance and requires the Government to reimburse the contractor for all reasonable costs incurred after the period of performance ends. Misunderstandings can lead to disputes as well as a shortage of funds (requiring ratification) if the activities required are not agreed upon and funded in advance. A better approach than utilizing the clause is to include a negotiated phase-in/phase-out period in the contract as part of the final performance period and require the contractor to submit a transition plan at least 90 days prior to contract expiration.

2437.112 - Government use of private sector temporaries.

(a) Acquisition of private sector temporaries is governed by 5 CFR Part 300, Subpart E.

(b) No employer-employee relationship is created by an agency's use of private sector temporaries under these regulations. Services furnished by temporary help firms shall be performed by the firm's employees who shall not be considered or treated as Federal employees for any purpose; shall not be regarded as performing a personal service; and shall not be eligible for civil service employee benefits, including retirement.

(c) The Office of Personnel Management regulation authorizes the use of private sector temporaries only in short-term situations where:

- (1) An employee currently filling a position is absent from the position for a temporary period (short-term) because of a personal need including a(n) emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances that are not shown to be compelling in the judgement of the requesting office; or
 - (2) There is work that must be carried out for a temporary period that cannot be delayed because of a critical need.
- (d) The length of time for using a private sector temporary must not exceed 120 work days in a 24-month period. If an appropriate need still exists at the end of the 120 work days, the temporary may work up to a maximum of 240 workdays provided it has been determined that using the services of the same individual for the same situation will prevent significant delay.
- (e) The request for temporary services shall certify to all of the following:
- (1) Will not displace a Federal employee;
 - (2) Is not for the work of managerial or supervisory positions;
 - (3) Will not be for the work of or to fill an SES employee or position;
 - (4) Does not circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service;
 - (5) Will not circumvent controls on employment levels; and
 - (6) Will not be used in lieu of appointing a surplus or displaced Federal employee as required by 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).
- (f) All requests for temporary services must be approved through the Office of the Chief Human Capital Officer.

Subchapter 2437.2 – Advisory and Assistance Services

2437.203 – Policy.

- (d) The CO will ensure that the requirements of FAR 37.203 are satisfied before any such outside individual is engaged on a contractual basis to evaluate proposals.

2437.204 – Guidelines for determining availability of personnel.

- (a) The CO will prepare a written determination for the HUD Secretary's signature in accordance with FAR 37.204 when the CO deems the use of outside evaluators is justified. The program office must provide the CO with its written justification for outside evaluators addressing the

requirements of FAR 37.203(d) and 37.204. The determination must include all information needed to make any determination to use outside evaluators. In accordance with HUDAR 2437.204, the HUD Secretary is the signature level for the determination required by FAR 37.204. The CO will ensure that no information is made available to outside evaluators before the CPO has executed the required determination.

Subchapter 2437.6 - Performance Based Acquisition

2437.602 – Performance work statement.

2437.602-70 - Performance based service acquisition.

(a) In July 2003, the Office of Federal Procurement Policy (OFPP) issued a report “Performance-Based Service Acquisition: Contracting for the Future,” outlining recommendations to improve the quality and increase the use of performance-based service acquisition (PBSA). An interagency task force representing agencies that award a significant dollar amount of service contracts and task orders developed these recommendations. The purpose of this memorandum is to implement several of the task force’s suggestions, including new instructions for reporting and querying the Federal Procurement Data System (FPDS).

(b) The following PBSA resources may be accessed through the OCPO intranet site:

(1) *Increasing the Use of Performance-Based Service Acquisition*, (Memo from OFPP, dated 9/7/04, which implements changes to PBSA reporting requirements –pdf file);

(2) [Seven Steps to Performance-Based Services Acquisitions](#);

(3) [Performance Based Services Acquisition Guidebook](#) (pdf file) The Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense, dated December 2000, contains valuable tools for developing a performance based work statement and establishing measurable performance standards and;

(4) [Guide to Performance Based Payments](#) (pdf file). This guidebook provides strategies for providing financing to contractors performing under fixed price contracts based on the achievement of specific events or accomplishments that are defined and valued in advance by the parties to the contract rather than being tied to and based upon incurred costs of performance.

(c) COs and CSs should give preference to PBSA and are encouraged to use the Seven Steps to Performance-Based Service Acquisition Guide, in their development of PBSAs.

Chapter 2438 – Federal Supply Schedule Contracting [RESERVED]

Chapter 2439 – Acquisition of Information Technology

2439.000 – Scope of chapter.

This chapter prescribes acquisition policies and procedures for use in acquiring information technology.

Subchapter 2439.2 – Electronic and Information Technology (EIT)

2439.201 – Scope of Subchapter.

This subchapter prescribes policies and procedures supplementing FAR 39.2.

2439.270 – Section 508 Forms.

(a) Any requisition for a contract action that includes EIT as a deliverable must include the following forms as applicable:

(1) Determination of Section 508 Compliance (required for all proposed acquisitions).

(2) Section 508 Compliance – Commercial Non-Availability. This form must be submitted when the requiring activity determines that the product(s) to be procured are not available in a compliant version in the commercial marketplace, nor expected to become available in a compliant version in time to satisfy agency delivery requirements.

(3) Section 508 Compliance – EIT Undue Burden Exception. This form is required when the requiring activity has determined that procuring Section 508-compliant products constitutes an undue burden.

(b) Each of the supplemental forms must be completed with justifiable documentation attached where required. Requisitions submitted to OCPO that do not include all applicable Section 508 justification documentation will be returned to the program office.

(c) The Determination of Section 508 Compliance, Section 508 Compliance – Commercial Non-Availability and Section 508 Compliance – EIT Undue Burden Exception forms are located with the mandatory templates located in the OCPO intranet site through the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) Individuals initiating requisitions will be responsible for the accuracy of the Section 508 certifications included in the requisition.

Chapter 2440 – [RESERVED]

Chapter 2441 – Acquisition of Utility Services [RESERVED]

Chapter 2442 – Contract Administration and Audit Services

2442.000 – Scope of chapter.

This chapter prescribes policies and procedures for assigning and performing contract administration and contract audit services (see FAR Part 42 and HUDAR Part 2442 for related information).

Subchapter 2442.1 - Contract Audit Services

2442.170 – Audit of final contract costs.

(a) Requirement.

(1) The CO with the assistance of the COR, will obtain a final cost audit for all cost-reimbursement (see FAR Subpart 16.3), time-and-materials (materials portion only; see FAR Subpart 16.6), and similar contracts and orders (*e.g.*, combinations including those types), that have \$1 million or more in unsettled indirect costs.

(2) Combination cost-reimbursement/fixed-price contracts and orders. If a contract or order has a combination of cost-reimbursement and fixed-price elements, the CO will obtain a final audit if the unaudited amount of indirect costs under the cost-reimbursement portion exceeds \$1 million.

(3) Multiple cost-reimbursement orders. When multiple cost-reimbursement orders issued under a single indefinite-delivery contract are to be closed, and any one task/delivery order exceeds the \$1 million threshold (*i.e.*, not all orders must meet the threshold), the CO will include all of the expired cost-reimbursement orders in the audit.

(4) A final audit is not required if the CO determines that existing audit information for the contract is adequate. To be considered adequate, existing audit information must:

- (i) Cover most of the contract's or order's costs, with less than \$1 million remaining of unaudited indirect costs over the total contract or order life;
- (ii) Set forth final or provisional indirect rates that may be used to close the contract or order (see quick closeout procedures); and
- (iii) Indicate that the contractor has an acceptable accounting system and internal controls.

(b) Audit Resolution and Cost Settlement. The CO will resolve all audit findings and settle all interim costs prior to closing the contract or order. The CO will document the resolution in the contract or order file with a negotiation memorandum and maintain these documents in the acquisition management system. The memorandum will state each issue (tracked to the audit finding), describe its resolution and include the rationale why the resolution is reasonable or advantageous to the government.

Subchapter 2442.2 – Contract Administration Services**2442.201 – Contract administration responsibilities.****2442.201-70 - CO's responsibilities.**

The CO is responsible for the administration of all contracts as assigned. The CO is assisted by the CORs, alternate CORs and other employees assigned to provide technical subject matter expertise, as needed (see Handbook 2401.602-2).

Subchapter 2442.3 – Contract Administration Office Functions**2442.302 – Contract administration functions.****2442.302–70 – Contract administration functions.**

The CO is responsible for the contract administration functions listed at FAR 42.302. In addition, the CO will:

- (a) Ensure that the parties to the contract are informed of their responsibilities with regard to monitoring and administering the contract;
- (b) Issue delegations of authority letters to CORs as required. Mandatory templates to be utilized are located on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates
- (c) Notify the contractor of the designation of the COR and the extent of the COR's delegated authority;
- (d) Monitor contractor expenditures and costs under cost-type, time-and-materials, and labor-hour contracts. The CO may delegate this responsibility to the COR in the COR's delegation of authority letter (see Handbook 2401.602-2);
- (e) Provide the COR with copies of all correspondence issued to the contractor;
- (f) Ensure that work products are delivered in accordance with the terms and conditions of the contract. The monitoring of deliveries and inspection of deliverables is usually delegated to the COR;
- (g) Promptly resolve potential and actual contractor performance problems identified or reported by the COR or the contractor;
- (h) Make decisions regarding disputes as provided for in the contract's disputes clause (though these may be appealed to a higher OCPO authority);

- (i) Disallow contractor costs, when warranted (cost-reimbursement type contracts only); and
- (j) Perform audits.

2442.302-71 – COR’s responsibilities.

The COR responsibilities and authorities will be delineated in a delegation of authority letter issued by the CO. Further guidance on the tasks, role and responsibilities for CORs is accessible on the OCPO Intranet site.

Subchapter 2442.5 – Post-Award Orientation.**2442.501 – General.**

- (c) The CO will consult the COR and other appropriate program office or technical staff when deciding if post-award orientation is required for a specific contract. Orientation may be made by letter or via conference as the CO deems appropriate. Post-award orientation may be used for task orders as well as new contract awards.

2442.503 – Post-award conferences.**2442.503-170 – Post-award conference arrangements.**

The CO is responsible for ensuring that all conference arrangements are made. The post-award conference may be held in person or via electronic media (*e.g.*, telephone or video conferencing). The program office may assist the CO.

2442.503-270 – Post-award conference procedure.

The CO will ensure that any requirement for the contractor’s attendance at a post-award conference is communicated to the contractor. When known prior to solicitation, the requirement for attendance must be included in the solicitation. If known at the time of issuance, the conference logistics and any specific requirements (*e.g.*, personnel required to attend) may be stated in the solicitation. Additionally, the method of attendance must be included in the solicitation, such as in person, telephonically, etc.

2442.503-271 – Post-award conference topics.

- (a) The CO will ensure that the conference addresses all topics deemed necessary for the specific contract. The CO will ensure that a conference agenda is provided to the participants before the orientation. A sample post-award agenda is provided on the OCPO intranet site at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

2442.503-272 – Post-award conference attendance.

(a) The number and type of participants will depend upon various factors including, but not limited to, the complexity of the contract effort, the particular requirements of the contract, the contractor's experience, and the type of contractor (*e.g.*, small business). The CO should consult the COR regarding the need for the mandatory attendance by any particular contractor staff, including subcontractors, and notify the contractor if specific individuals are required to attend.

(b) The CO may appoint a post-award chairperson to conduct the post-award conference. If the CO elects to appoint a chairperson, the appointment should be accomplished through a memorandum to ensure that the chairperson is informed of their responsibilities. The template for the *Chairperson Designation Memorandum* is located in the Post-Award Orientation Conference Templates at the following URL:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(c) Typically, HUD will be represented by:

(1) The CO or designee (*e.g.*, the contract specialist assigned to administer the contract). The CO or designee will chair and conduct the conference;

(2) The COR and alternate COR(s); and

(3) Any other technical or specialized staff needed (*e.g.*, IT).

(d) Typically, the contractor will be represented by:

(1) The individual designated by the contractor to oversee the contract (*e.g.*, contract manager, project director) and authorized to act on the contractor's behalf;

(2) Contractor personnel (including subcontractor personnel and consultants) who are or will be designated as key in the "Key Personnel" clause of the contract; and

3) Any other contractor or subcontractor personnel whose technical expertise is needed or desirable.

2442.503-370 – Post-award conference report.

The CO will ensure that a conference report, as required by FAR 42.503-3, is prepared and maintained in the acquisition management system. A copy of this report should be provided to all participants.

2442.504 – Post-award letters.

(a) A post-award letter is appropriate whenever the CO decides that a full post-award conference is not necessary. Typically, a post-award letter is used for simple and routine contracts or when the new contractor was the incumbent and there have been no significant changes to the terms of the new contract.

(b) A post-award letter will:

- (1) Identify the HUD personnel responsible for the administration of the contract, including the designated CO, contract specialist, COR, and their respective authority and duties.
- (2) Discuss significant contract requirements reflected in the checklist that apply to the contractor.
- (3) Highlight any contractual requirements that merit the contractor's particular attention.

Subchapter 2442.7 – Indirect Cost Rates.

2442.708 – Quick closeout procedure.

(a) In accordance with FAR 42.703-1, a Federal contractor must establish with a single Federal agency (lead agency) the indirect cost rates (*e.g.*, labor overhead) that it will use on all its Federal cost-reimbursement contracts for a specified period of time (normally, one year). Agencies other than the lead agency will accept the rates for use under their own cost-reimbursement contracts with that contractor. The lead agency usually assigns a “provisional” or “billing” rate that the contractor can use until a final rate is determined. The provisional or billing rate is later superseded by applicable final indirect rates. However, at the time HUD closes out the contract, a contractor's final indirect rates for the period during which a contract was active may not yet have been determined. In such cases, FAR 42.708 requires COs to negotiate final indirect rates for any contract when the total unsettled indirect cost to be allocated to the contract does not exceed \$1 million and all of the conditions set forth in FAR 42.708 are met.

(b) When the quick closeout procedure is used, the CO will negotiate final indirect rates without seeking an audit.

(c) When using the quick closeout procedure, the CO is required to complete all other closeout steps listed in Handbook 2404.804-573 applicable to the contract.

(d) COs will review the contract file to ensure that there are no issues that would prevent the use of the quick-closeout procedure. The review of the file will include:

- (1) The contract's terms and conditions. Confirm whether the contract included any pre-negotiated overhead rates or advance understanding with regard to specific items of indirect costs. If so, those rates or agreements will be used to establish the final cost/price of the contract;
- (2) Vouchers to determine the allowability and reasonableness of reimbursed costs; and
- (3) Any previous audit reports to determine if any adjustments were made to indirect costs that may be applicable to the contract at time of closeout.

Subchapter 2442.11 – Production Surveillance and Reporting.**2442.1101 – General - Managing cost and schedule for risky contracts.****2442.1101-70 - Background.**

(a) Managing the costs and schedule associated with the riskier types of contracts identified in this subchapter can be challenging. Program offices may not understand the value associated with ensuring the contractor addresses cost-overruns or variations in schedule, and may even consider re-applying funding left over from cost-underrun tasks to other awarded tasks to be simply an administrative matter.

(b) The Government Accountability Office (GAO) has issued numerous reports on this issue. GAO advocates a disciplined approach to projects, executed internally or by Federal contractors, whereby due diligence is applied to cost and schedule to minimize risk.

(c) That being said, contract management techniques need to be reasonable and flexible enough to minimize cost and schedule risk and still meet the needs of the program in organizational and mission-related outcomes without violating appropriations laws. This subchapter is developed with the objective of assisting Contracting Officers, Contract Specialists, and Program personnel in identifying a suitably balanced contract management and oversight approach.

2442.1101-71 - Definition of Key Terms.

(a) Actual Cost of Work Performed (ACWP). ACWP is the amount actually spent in the accomplishment of work performed. The amount actually spent includes direct costs (*e.g.*, labor and material) and indirect costs (*e.g.*, overhead and G&A expense).

(b) Baseline plan. The baseline plan represents the contractually awarded cost and schedule.

(c) Budgeted Cost of Work Performed (BCWP). BCWP is the amount budgeted for that portion of the scheduled work that was actually performed (*i.e.*, what the contractor planned to spend for the work actually accomplished).

(d) Budgeted Cost of Work Scheduled (BCWS). BCWS is the amount budgeted for work scheduled to be accomplished. It is a time-phased expenditure plan, developed at the start of the contract, measurable against the cumulative-to-date, and contract completion time periods.

(e) Cost Underrun. A cost underrun is the amount by which the actual cost is below the budgeted, estimated, original, or target cost.

(f) Cost Overrun. A cost overrun, also known as a cost increase or budget overrun, involves unexpected costs incurred in excess of budgeted amounts due to an underestimation of the actual cost during budgeting.

(g) Progress Reports. Progress reports consist of:

(1) A narrative portion that:

- (i) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and
- (ii) Identifies problems, or potential problems, that will affect the contractor's cost or schedule, the causes of the problems, and the contractor's proposed corrective actions.

(2) A graphic portion showing:

- (i) The original time-phased budgeted baseline;
- (ii) The schedule status and degree of completion of the tasks, activities, and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan; and
- (iii) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected costs required to complete the work under the contract.

(h) Work Breakdown Structure (WBS). The WBS organizes, defines, and graphically displays the product to be produced based upon the Performance Work Statement (PWS) contained in the contract, as well as the work to be accomplished to achieve the specified product. The contractor's baseline plan is developed using the same WBS.

2442.1102 - Applicability.

2442.1102-70 – Applicability of managing cost and schedule for risky contracts.

(a) This subchapter applies to solicitations and the resultant contracts and task orders utilizing cost reimbursement, time and materials, or labor-hour types when both of the following conditions apply:

- (1) The contract exceeds \$1 million including all options; and
- (2) The contract is a completion type that requires the delivery of an overall end deliverable or product (*e.g.*, evaluation, study, or model).
- (3) However, COs should allow increased flexibility for contracts where the program office uses formal detailed management and work plans tied to task, budget and personnel; require interim reports and briefings with HUD staff; require data collection and analysis plans; require formal modification requests to the management and work plan as requirements substantively change; COR observes data collection directly and communicates immediately to key staff any deficiencies noted; and requires COR's supervisor participation in contract oversight.

(b) It is not applicable to contracts that only expend a level of effort without a completion deliverable/product due (*e.g.* temporary services). The CO may elect to apply it in contracts below the established threshold.

(c) This subchapter will be referenced in interagency agreements with shared services providers who award similar contract actions on HUD's behalf. This subchapter does not apply to Information Technology service contracts being managed through Earned Value Management techniques that require reporting of Earned Value Management.

2442.1103 – Policy.

2442.1103-70 - General Policy.

(a) Responsible Parties. While the CO is ultimately accountable and responsible for contract oversight, the delegated COR and Program Manager are also responsible for delegated contract oversight functions. The CO will consider the input from the formally designated COR and the Program/Project Manager (PM) who also have vested interests in ensuring contractor cost and schedule are acceptable to achieve the intended outcomes.

(b) HUDAR Clause. HUDAR clause 2452.242-71, Contract Management System, must be incorporated into contracts identified in HUDAR 2442.1107. This clause requires the contractor to use contract management baseline planning and progress reporting which would allow for effective contract oversight of cost and schedule. The CPO has issued a deviation to the HUDAR clause. However, while the clause alternate 1 applies to fixed price contracts, this subchapter only applies to non-fixed price contracts that meet the criteria in Handbook 2442.1102-70.

(c) Level of Contract Surveillance. The more critical and/or complex the requirement is to the Government, the more attention must be given to contract surveillance, including identification and analysis of cost and schedule variances. While the contractor is responsible for timely cost-effective contract performance, the Government is responsible for maintaining contract surveillance to the extent necessary to protect the Government's interests. When analyzing the amount of contract surveillance required, consider the following.

(1) Contract requirements for reporting progress and performance. Cost-reimbursement, time-and-materials, and labor-hour contracts typically have stricter requirements for reporting progress and contracts.

(2) Contract performance schedule. Contracts with longer schedules will normally merit closer surveillance because there is a longer period before late deliveries and other routine indicators will occur and reflect that problems exist.

(3) Contractor's history of contract performance. A contractor with a history of overruns or late deliveries will normally merit closer surveillance.

(4) Contractor's experience with the contract supplies or services. A contractor with limited experience will normally merit closer surveillance.

(5) Contractor's financial capability. A contractor with marginal financial capability will normally merit closer surveillance as they may purposely seek opportunities for cost overruns to assist their financial situation.

(6) LIN structure. While tasks may be managed at the sub-LIN level, managing costs to the sub-LIN level may result in creating more obstacles to performance than is achieved in cost savings, especially when it is necessary to move funding from one task to another and the period of availability of the funding for obligation has expired. Remember, these are not fixed price awards and should not be administered as such. A suitable balance must be maintained whereby the government's interests are protected, the contractor can perform without undue impediments and the program office objectives are met while ensuring accountability for cost, schedule, and performance.

2442.1103-71 - Identifying and Analyzing Cost and Schedule Variances.

(a) The Government must consider the following contract cost/schedule variance factors that may influence contract over/underruns:

- (1) Information on variances;
- (2) Cost and schedule variances;
- (3) Information sources;
- (4) Cost/schedule and contract funds status reporting;
- (5) Realignment of funds;
- (6) Contractor-submitted invoices;
- (7) Limitation of costs/funds notice;
- (8) Progress review meetings; and
- (9) Routine observations by Government personnel.

(b) The following provides greater detail on the factors above:

- (1) Uses for information on variances.

(i) The information on variances that is obtained from cost and schedule projections can provide vital input to the CO for many contract administration decisions. The CO, COR and PM must consider the following:

- (A) Information on the contractor's progress toward timely contract completion is important for the administration of any contract.

(B) It is critical for cost-reimbursement, time-and-material, and labor-hour contracts. For these contracts, the contractor only agrees to put forth its best effort to complete the contract effort within funding, cost, or price limitations.

(ii) Information on contractor cost and schedule performance is essential to negotiating equitable adjustments that leave the contractor in the same profit position as it was before any modification.

(2) Cost and schedule variances. To analyze variances, both contractor cost and schedule variances from initial cost estimates must be identified. For example, a contractor in month 4 of a 12-month contract is tracking perfectly with estimated costs through month 4. However, the contractor is two months behind schedule. In other words, 2 months of actual performance has cost as much as 4 months were projected to cost. If only cost is considered, there does not appear to be a problem. However, the reality is that, when both cost and schedule are considered, there appears to be a significant potential for a cost and/or schedule overrun.

(c) Information sources. COs, CORs and PMs will use a variety of credible sources to monitor cost and schedule performance variances. These include:

- (1) Contractor's cost baseline (this can be as simple as the labor mix and the level of effort);
- (2) Progress review meetings with the contractor;
- (3) Progress reports provide information on BCWS, BCWP and ACWP;
- (4) Contractor-submitted invoices (reviewing for actual costs against completed work);
- (5) Contractor estimates to complete the work; and
- (6) Routine observations by Government personnel.

(d) Cost/schedule and contract funds status reporting.

(1) When the contract requires cost/schedule progress reports, the CO may require the contractor to describe its plan for cost/schedule management and reporting. The COR must provide contract oversight ensuring that the contractor provides the cost/schedule progress report as listed in the contract.

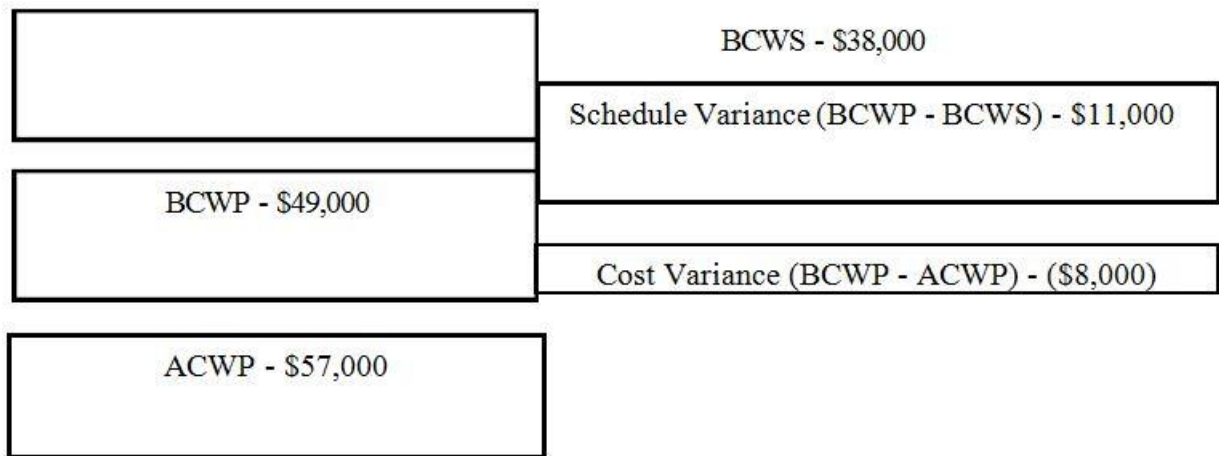
(2) In addition, the COR will also document contract costs and funding status on a regular basis to ensure that the contract does not exceed what was budgeted. Contract funds progress reports are used to compare the estimate of total funds required to complete authorized contract work with existing contract funding.

(3) The cost/schedule and contract funds progress reports can be combined with cost information from contractor requests for progress payment or cost-reimbursement invoices to

obtain a general picture of contract progress compared to costs expended. If an apparent problem is identified, the COR will request a technical review of the contractor's physical progress toward contract completion and provide an assessment to the CO with the supporting documentation.

(4) Below is an example of the type of problem that might be discovered in this assessment:

Figure 2: Cost/Schedule Variances



(5) If the contract cost/schedule and contract funds status reporting is not properly tracked, the Government can improperly use taxpayer funds. For example, in the Government Accountability Office (GAO) report 14-694 found at URL <http://www.gao.gov/assets/670/665179.pdf>, Ineffective Planning and Oversight Practices Underscore the Need for Improved Contract Management, for [Healthcare.gov](http://www.healthcare.gov), GAO findings detailed the lack of proper contract and program management tactics to assess Centers for Medicare & Medicaid Services (CMS) oversight of cost, schedule, and system capability changes. GAO performed a data reliability check of cost data for selected contracts and task orders by comparing contract modification documentation to contract obligation data in the Federal Procurement Data System-Next Generation. In addition, GAO reviewed contract modifications, contractor monthly status and financial reports, Performance Work Statements, contractor deliverables, schedule documentation, Contracting Officer's Representative files, and meeting minutes to determine if there were any changes and whether system development proceeded as scheduled.

(e) Realignment of Funds.

(1) The contract tasks and funds can be realigned whenever the program office has a bona fide need to make changes to the contract in order to prevent cost and funding overruns. Although cost underruns are encouraged if the requirement can be accomplished for less than estimated costs; a discussion should be conducted with the vendor if there are substantial cost underruns to discuss the reason for the difference between the estimated and actual costs.

(2) An example of a realignment of funds follows:

A training services cost reimbursable contract totaling \$1,550,000. The funding amount of \$1,550,000 is obligated at the LIN level (LIN 0001) and the main tasks for LIN 0001 are issued at the SubLIN level as Not Separately Priced (NSP). SubLIN 0001AA, Training Developer, estimated amount is \$1,500,000 and this estimated amount is typed in the SubLIN description; and SubLIN 0001AB, Travel, estimated amount is \$50,000 and the estimated amount is typed in the description of this SubLIN. On execution of the award, the contract is incrementally funded \$525,000 with LIN 0001AA for \$500,000 and LIN 0001AB for \$25,000. During the monitoring of the contract, the program office determines that it needs less training development services and more travel than anticipated. The CO may realign funds from LIN 0001AA to LIN 0001AB to fully fund the additional travel commitment.

(3) The goal is to manage tasks and costs at the SubLIN level while funding at the LIN level, all while ensuring the overall objectives of the award are met. Realignment of funds from one LIN to another would require issuance of a modification to deobligate funds from one LIN and issuance of a second modification to re-obligate the funds to the second LIN (if the funds are expired, they would not be available for re-obligation to the second LIN). If funding is obligated at the LIN level, only a single modification would be required that aligns funds from one SubLIN to the second SubLIN (since funds are obligated at the LIN level, expiring funds would not be an issue).

(4) The CO, COR, and contractor are responsible for accurate data. The data on the labor and other direct costs (ODCs)/travel categories should be analyzed and reviewed at least monthly so that problems are addressed as soon as they occur and cost and schedule overruns can be avoided or at least mitigated to the maximum extent possible.

(5) For variances requiring a realignment modification by the CO, the following guidance is provided:

(i) Requests for realignment will be made by the contractor and validated by the program office.

(ii) Requests for realignment based on personnel changes will not be considered.

(iii) Requests for realignment must be justified based on unforeseen circumstances, new effort with no prior history, lack of opportunity for advance input, or other justifiable reasons.

(6) Recognize that a decision to award a contract is made based upon the mix of resources quoted by the successful offeror on the effort, and their functional approach for accomplishing that effort. Therefore, the CO must carefully consider all facts when authorizing a change in the quoted labor mix or level of effort as it may jeopardize the basis for the original contract award decision. This may lead to a protest.

(7) The CO in collaboration with the program office and contractor must ensure that changes to the contract do not breach the scope, cost, and/or funds to the contract. Realignment to the contract requiring a modification are not official until a modification incorporating the realignment has been signed by the CO. All realignments will be taken into consideration as a part of the annual contractor performance evaluation.

(f) Limitation of Costs/Funds Notice

(1) All cost-reimbursement contracts must include a contract clause limiting the Government's obligation to reimburse contractor costs. As shown in table 1 below, each of the clauses used to limit the Government's obligation also requires contractor notification that total costs are approaching the defined limit.

Table 1: Contractor Notification Requirements

Contractor Notification Requirements		
If the contract is....	Then the contract must include the....	Which requires the contractor to notify the Government:
Cost-reimbursement contract: <ul style="list-style-type: none"> • A fully funded cost-reimbursable contract 	<ul style="list-style-type: none"> • Limitation of Cost (FAR Clause 52.232-20) 	Whenever the funded portion of the contract costs is expected to exceed a stated percentage (normally 75 percent) of the amount so far allocated to the contract cost within a stated period (normally 60 days).
<ul style="list-style-type: none"> • An incrementally funded cost-reimbursement contract 	<ul style="list-style-type: none"> • Limitation of Funds (FAR Clause 52.232-22) 	Sixty days before the end of the period specified in the contract schedule of the estimated amount of funds (if any) required to continue timely performance.

A time-and-material or labor-hour contract	Payments Under Time and Materials and Labor-Hour Contracts clause (FAR 52.232-7)	<p>Whenever labor and material costs are expected to:</p> <ul style="list-style-type: none"> • Exceed 85 percent of the ceiling price within the next 30 days; or • Be substantially greater or less than the stated ceiling price.
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(2) Contractor notification requirements do not replace effective contract surveillance. The CO and COR must question significant variations long before contractor notification. By the time contractor notification is received, it may be too late for the contractor to take corrective action or the contractor may fail to provide timely notice despite the contract requirement. There have been many contracts where the contractor did not provide notice until after all contract funds were expended.

(g) Contractor-Submitted Invoices.

(1) Under cost-reimbursement contracts, the contractor submits invoices for payment of costs to the COR. Unless operating under progress payments, the contractor is not required to submit an estimate of the cost to complete the contract with the cost-reimbursement invoice. Time and materials and labor-hour contracts work similarly. Contractor-submitted invoices provide an excellent record of the contractor's costs that can be coupled with other information such as surveillance and reporting documents to identify potential cost overruns. Records that can be reviewed include:

(i) Progress reports. The COR will ensure invoices are properly supported and match the information on the progress reports. Proper support will include elements of costs and billings during the period and be supported by employee time cards reflecting allocation of time to the project, authorization for travel and receipts reflecting travel performed in accordance with Federal Travel Regulations, and other supporting data as necessary.

(ii) Those recorded costs that, at the time of the request for reimbursement, the contractor paid by cash, check, or other form of actual payment for items or services purchased directly for the contract.

(iii) Costs incurred, but not necessarily paid for, including:

(A) Materials issued from the contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct material;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs.

(iv) The amount of any progress payments that have been paid to the contractor's subcontractors.

(v) Contractor contributions to any pension or other post-retirement benefit, profit sharing, or stock ownership plan paid in accordance with contract requirements.

(2) Any invoices not fully supported or questionable must be referred to the Contracting Officer for review. Only the CO may disapprove any invoice or approve only partial invoices.

(h) Progress review meetings. Regularly scheduled progress review meetings provide an excellent forum for the identification and resolution of contract problems that may affect contract cost and performance.

(1) Members include key personnel of the contractor and key members of the Government acquisition team (*e.g.*, program management, contracting, technical, quality assurance, and others).

(2) Together, the team evaluates overall contract status, including the identification and resolution of problems that may be affecting contract cost or schedule.

(3) The contractor is required to submit a contract status report prior to each review. Those status reports then become the basis for analysis and discussion.

(4) The CO must encourage open discussion to identify problems that may affect contract schedule or cost as early as possible so that action can be taken to resolve them and mitigate their impact.

(i) During the progress review meetings, the contractor must come prepared to discuss the following:

(1) Progress toward contract completion;

(2) Cost of work completed to date;

(3) Reasons for variances from initial estimates; and

(4) Cost estimate to complete the contract.

(j) Additionally, the COR will conduct periodic meetings with contractor technical personnel to discuss technical questions that may affect contract cost and schedule. These technical meetings

can be used to supplement progress review meetings. Any issues identified during these meetings must be conveyed to the CO.

(k) Routine observations by Government personnel.

(1) The first indication of potential cost/schedule problems often comes from routine observations by Government technical personnel. Routine observations by Government personnel will identify a variety of indicators of problems affecting timely and cost effective contract performance, such as:

- (i) Selection of work methods that are not suited to the contract effort;
- (ii) Problems in completing critical tasks or production processes;
- (iii) Inadequate personnel training or experience;
- (iv) Labor unrest (*i.e.*, dissatisfaction that could cause a slowdown in operations); or
- (v) Comments about cost/schedule problems made by contractor personnel.

(2) The biggest problem with routine observations as a source of information on potential overruns is that the observations are often not reported to the CO. The COR is required to keep the lines of communication open between CO and Government technical personnel. By fostering communication between Government acquisition team members, the big picture emerges from the various puzzle pieces discovered through the various surveillance methods.

(3) For example, a COR believes that the contractor team leader has only minimal experience in performing the type of work required by the contract. The Government project manager believes that the contractor team leader is putting unreasonable constraints on contractor personnel and these constraints are hampering contract operations. It may be that the contractor's failure to hire a qualified team leader is putting the contract schedule and cost performance in jeopardy.

2442.1103-72 - Resolving Potential Cost Overruns.

The CO is ultimately responsible for resolving contract cost overruns. However, the program manager, COR and contractor are involved with providing credible information to the CO in order to modify the contract cost/schedule and/or funding elements. Changes to the contract must be explained and documented in the contract file. Adverse findings in audits could harm the Government. A number of tools and considerations will impact how cost overruns are resolved. These include the following:

(a) Mitigation plan.

(1) The CO, program office, and contractor must have a mitigation plan in place to prevent cost/schedule overruns.

(2) The CO with input from the program office must consider mitigation strategies to resolve contract cost/schedule overruns. These may include:

- (i) Withholding action until more information is available;
- (ii) Providing additional funds/time to complete the contract as is;
- (iii) Redefining the contract effort to fit existing funds;
- (iv) Allowing the contract to continue without change; or
- (v) Terminating the contract.

(3) During this analysis, the CO must also consider the contract ceiling, schedule, availability and sources of funding, probable impact of not completing the contract and alternatives to completing the contract.

(b) Type of contract.

(1) Cost-Reimbursement contracts. For cost-reimbursement contracts, the CO must determine the most appropriate action considering that the Government is responsible for reimbursing the contractor for all allowable costs up to the cost and funding limits established in the contract. A cost is reimbursable only if it is determined to be allowable, allocable, and reasonable in accordance with FAR Part 31.2.

(2) Labor-Hour contracts. For Labor-Hour contracts, the CO must determine the most appropriate action, considering that the Government is responsible for paying the contractor, by each labor category and rate, for the hours actually worked during the timeframe. The CO and COR should analyze contractor invoices by requesting individual daily job timekeeping records to support the hours claimed.

(3) Time and Material contracts. For Time and Material contracts, the CO must determine the most appropriate action, considering that the Government is responsible for paying the contractor, by each labor category and rate, for the hours actually worked during the timeframe and the cost of identified materials utilized in performance of the contract. The CO and COR should analyze contractor invoices by requesting individual daily job timekeeping records and subcontractor invoices to support the hours and materials claimed.

(c) Assessment and determination of best mitigation strategy to employ. The following is a discussion of the types of mitigation strategies that might be employed:

(1) Withhold action. In situations where the analysis identifies cost or schedule variances, it may be appropriate to take no action until additional information can be obtained. The CO will consider this course of action when:

- (i) It is unknown whether the contractor can recover from current cost or schedule variances to complete the contract within the original cost and schedule.
- (ii) Additional information is needed that may affect contract cost and schedule.
- (iii) A major program management decision is in progress and the decision will affect the action taken on the contract.
- (iv) Funding is uncertain.

When action is withheld awaiting more information, the CO will inform the contractor. Failure to put the contractor on notice can result in the Government assuming additional liability through constructive consent. The CO will consider the following general steps to put the contractor on notice that the Government intends to withhold action pending further fact-finding:

- (i) Acknowledge that the Government is considering whether to add funds or increase the estimated contract cost.
- (ii) Point out that the contractor is entitled to stop work when the contract dollar limit has been reached.
- (iii) Warn the contractor that any work done beyond the dollar limit will be at the contractor's own risk.

(2) Provide Extra Funds/Time to Complete the Contract. When additional funding is available, the need exists, and the increase in cost is justifiable, the most logical course of action may be to continue contract performance. The CO will consider the following points when implementing a decision to add funds and/or change the contract schedule:

- (i) Obtain necessary approvals for the proposed course of action.
- (ii) Establish the amount of additional funds required and obtain a funded purchase request from the requiring activity, if applicable.
- (iii) Obtain concurrence on any proposed delivery date changes from the requiring activity, if applicable.
- (iv) Meet with the contractor to review contract requirements and verify the remaining tasks, then negotiate the cost/time changes needed to complete the contract.
- (v) Negotiate adequate consideration to the Government for increasing contract cost or revising the contract schedule (*e.g.*, a reduction in potential contract fee).
- (vi) Execute and distribute a bilateral contract modification.

(3) Redefine contract requirements to fit existing funds. Redefining the contract effort to fit available funds, sometimes called downscoping or rescoping, can be a viable option. This option is particularly attractive when additional funds are not available, but it can also be employed when the requiring activity determines that marginal elements of the contract are not worth the additional money. A rescoping of a contract is appropriate when the redefinition of the contract involves reductions of one or more line items to facilitate increases in other line items without using additional funds. This rescoping method can only be used when it is clear the contractor has not accurately projected the costs to perform the tasks but the tasks are still critical to complete the original project as scoped. The objective cannot simply be to use any excess funds the contractor may have saved by expending below the budgeted cost to perform. Such an action must clearly be supported by the budget reports and must also be reflected in the contractor's performance assessment. The CO can consider two kinds of methods to redefine contract requirements to fit existing funds: deductive contract modification and partial termination for convenience.

(i) A deductive modification is used when the redefinition of contract requirements is within the scope of the original contract. However, none of the changes clauses available for cost reimbursement contracts provide for changes in quantity. Such changes are normally considered to change the scope of the contract. For example, the CO can use a contract modification under the changes clause to downsize requirements in a variety of ways, including changes in:

(A) Specifications, drawings, or designs for supplies;

(B) Description of services;

(C) Method of shipping or packing; and

(D) Place of delivery or performance.

(ii) A partial termination for convenience is appropriate when the redefinition of contract requirements will change the scope of the original contract. The CO must use a partial termination when:

(A) Redefining contract requirements by eliminating items from the contract.

(B) The redefinition of other requirements (*e.g.*, the description of services) is so substantial as to change the scope of the contract.

(4) Allow the Contract to Continue Without Change. If the CO selects this alternative, the contract continues until funds expire. This approach is considered when:

(i) Additional funds are not available, but continued contract performance will benefit the Government.

(ii) Most of the vital elements of the contract will be accomplished within current requirements and funding.

(iii) The cost of contract redefinition or termination will be greater than the cost of simply allowing the contractor to use available funds and then halting contract performance.

If the CO selects this alternative, it is absolutely critical to:

(i) Advise the contractor that additional funds will not be added to the contract.

(ii) Advise the contractor that any contract performance beyond current contract dollar limits will be at the contractor's expense.

(iii) Ensure that the contractor does not perform beyond current contract dollar limits.

(5) Terminate the Contract. If the CO believes that the Government's best interests will be served by ending the contract immediately, the CO will terminate the entire contract for convenience.

2442.1103-73 - Evaluating Contract Performance Regarding Cost and Schedule.

A contractor's performance is evaluated and formally documented in the Contractor Performance Assessment Reporting System (CPARS). In addition to providing an adjectival rating, the evaluation must thoroughly document cost and schedule controls (especially regarding any underruns and overruns) and provide a narrative that discusses the differences between the contractor's proposed cost/schedule and the actual cost/schedule. The guidance for evaluating cost control states that for contracts or orders where task or contract sizing is based upon contractor-provided person hour estimates, the relationship of these estimates to ultimate task cost should be assessed. In addition, the extent to which the Contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in each work effort should be assessed. Include, as applicable, the following information:

- Does the Contractor keep within the total estimated cost (what is the relationship of the negotiated costs and budgeted costs to actuals)?
- Did the Contractor do anything innovative that resulted in cost savings?
- Were billings current, accurate and complete?
- Are the Contractor's budgetary internal controls adequate?
- Has the Contractor provided a design that can be constructed with the available funds?
- Has the Contractor notified the Government and taken necessary corrective actions when the cost estimate exceeds available funds?

2442.1103-74 - Exceptions.

Exceptions to this policy must be submitted to, and approved by, the Deputy Chief Procurement Officer.

Subchapter 2442.12 – Novation and Change-of-Name Agreements**2442.1203 – Processing agreements.**

(f) The CO will provide legal counsel with the information described in Handbook 2401.7003(d)(2)(i) when obtaining the legal review required by FAR 42.1203.

Subchapter 2442.15 – Contractor Performance Information**2442.1501 – General.****2442.1501-70 - Background.**

(a) Contractor past performance information is a useful tool in determining a contractor's ability to successfully perform work on existing and future Government contracts. Factors such as product/service quality, ability to control costs, adherence to schedules, level of professionalism, and performance of subcontracting plans and programs all provide insight into the degree of success that may be expected from a contractor.

(b) FAR 15.304(c)(3)(i) mandates the use of past performance data as an evaluation factor in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold, unless the CO documents that it is an inappropriate evaluation factor for the acquisition. The Office of Federal Procurement Policy (OFPP) has established standards in their best practices guide for evaluating past performance that facilitate consistent evaluations by all executive agencies. The Contractor Performance Assessment Reporting System (CPARS) evaluation factors are consistent with those established by OFPP.

2442.1502 - Policy.**2442.1502-70 - Accessing CPARS.**

Each CO, Contract Specialist and COR will have access to CPARS through a user ID and password. Overall system administration will be managed by OCPO's Office of Policy, Systems and Risk Management.

2442.1503 - Procedures.**2442.1503-70 - Establishing evaluation milestones.**

(a) Consider the following guidelines when determining the frequency of CPARS evaluations:

(1) *Multiple year contracts (two or more years)* - Evaluate on an annual basis. Evaluations are expected to be conducted at least 60 days prior to contract completion on contracts with options to permit timely consideration of contractor performance prior to the exercise of an option.

(2) *Contracts for two years or less* - Evaluate once during the mid-point and again at completion.

(3) *Multiple Agency Contracts such as GSA Schedules/GWACs* - FAR Subpart 42.15 requires the CO to perform past performance evaluations on every order exceeding the simplified acquisition threshold and at the Master Contract level where HUD is the CO.

(4) *Single Agency Indefinite Delivery/Indefinite Quantity (IDIQ) contracts (Multiple Award or Single Award)* – FAR Subpart 42.15 allows the CO to perform a past performance evaluation either at the order level or the IDIQ contract level. If the evaluation is made on the contract level, no evaluation will be made at the order level.

2442.1503-71 - Considerations for establishing guidelines.

(a) Consider the following evaluation level. The decision to evaluate at the IDIQ contract level or order level is based upon the best interests of the Government. Past performance information entered into CPARS is automatically transmitted into the Past Performance Information Retrieval System (PPIRS). The axiom to remember here is “Once chosen, forever frozen.” Since the CPARS records are generated from FPDS-NG, there is no way to convert to assessing the master contract if the CO previously chose to assess all orders. There is no means to delete records from CPARS as they will regenerate from FPDS-NG at the next refresh cycle.

(b) Generally, the CO will elect to evaluate the overall contract unless evaluations at the order level will produce more useful past performance information for source selection purposes. The following represent some guidelines to assist the CO determine whether to evaluate only at the master contract level or at the order level:

(1) If the orders are similar in scope and being placed on behalf of a single program office, the CO will likely elect to assess the contractor’s performance only at the master contract level.

(2) If the contract is a multi-year contract and the CO is negotiating long-term task orders with options, the CO will want to assess the performance at the order level.

(3) If the contract is an enterprise-wide contract where different HUD components are generating task orders and assigning different CORs, the CO will want to assess the performance at the order level.

2442.1503-72 - Performance assessment process.

(a) The Focal Point assigns agency roles to the proper CPARS Assessing Official (AO), Assessing Official Representative (AOR), Reviewing Official (RO) and Contractor Representative (CR) to ensure notifications for CPARS are received and proper access to the CPARS system is established. The Focal Point also addresses questions regarding CPARS; assists, educates, facilitates and provides guidance to coworkers and others on CPARS processing procedures. The CPARS Focal Point is responsible for tracking and suspending CPARs as they become due, however, this does not relieve the AOs of the responsibility for processing quality reports in a timely manner.

(b) The COR will initiate a request for the performance assessment in CPARS. However, if the COR fails to perform this function timely, the CO must do so. If initiated by the CO, CPARS will notify the COR that a performance evaluation has been assigned to the COR. The COR then prepares a substantive evaluation using input from the program personnel as appropriate.

(c) The COR must apply adjectival ratings and supporting rationale to all categories identified for evaluation including technical, schedule, cost control, and management following the guidance in FAR 42.1503. Additional guidance for completing this part of the assessment can be found on the CPARS login under “Reference Material” at: <https://www.cpars.gov/refmatl.htm>.

(d) The COR must also address the areas of subcontracts, contractor key personnel and customer satisfaction. The narrative assessment of these areas should focus on the following and provide qualitative and quantitative supporting facts:

(1) *Subcontracts* – The contractor’s success with timely award and management of subcontracts.

(2) *Contractor Key Personnel* – The contractor’s performance in selecting, retaining, supporting, and replacing key personnel when necessary.

(3) *Customer Satisfaction* – The Government’s expectations for customer service have been met.

(e) Once complete, the COR then assigns the evaluation back to the CO or Contract Specialist who will receive e-mail notification from CPARS that the evaluation has been completed by the COR.

(f) If the COR does not provide the draft submission to the CO within 60 days prior to an option, the CO or Contract Specialist will reclaim the evaluation from the COR in CPARS and complete it using their own working knowledge of the contractor’s performance.

(g) Upon notification that the COR has completed the evaluation, the CO or Contract Specialist will review the assigned ratings and comments, resolve any discrepancies with the COR, and make any necessary changes.

(h) The CO or Contract Specialist must complete the “Additional Info” in CPARS that describes progress in meeting the goals outlined in the subcontracting plan for all categories of small businesses before the evaluation is sent to the contractor for review. The CO or Contract Specialist must specifically address the following in this regard:

(1) *Small Business Subcontracting Plan* – Whether the contractor is making or has made a good faith effort to meet or exceed the subcontracting goals established for small businesses, women-owned small businesses, HUBZone small businesses, veteran-owned small businesses, and service-disabled veteran-owned small businesses.

(2) *Small Disadvantaged Business Goals* – The contractor’s efforts to comply with the subcontracting goals established for small disadvantaged businesses.

(i) Once the CO reviews the COR's assessment and completes the "Additional Info" in CPARS, the CO signs the evaluation and then assigns it to the contractor using CPARS. The system will automatically generate an e-mail to the contractor's representative when the assignment has been made.

(j) Agency evaluations of contractor performance, including both negative and positive evaluations, prepared under FAR 42.1503(d) will be provided to the contractor as soon as practicable after completion of the evaluation. The contractor will receive a CPARS-system generated notification when an evaluation is ready for comment. Contractors will be afforded up to 14 calendar days from the date of notification to submit comments, rebutting statements, or additional information in CPARS. If the contractor fails to rebut or provide comments within the designated timeframe, the CPAR automatically becomes final after the timeframe has expired.

(k) HUD ACPOs will review, consider and resolve disagreements between the CO and the contractor regarding the evaluation. The ultimate conclusion on the performance evaluation is determined by the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, will be retained as part of the evaluation record.

2442.1503-73 - Additional contractor oversight/review requirements.

(a) In addition to the mandatory CPARS performance assessments, OCPO COs will perform the following enhanced monitoring for contracts of high dollar values:

(1) COs will develop and implement plans to conduct formal contractor performance reviews on active contracts and task orders with an estimated value in excess of \$1 million. Documentation of such reviews must address performance areas such as progress on completing contract requirements within cost/price and ensuring contractors complete and submit contract deliverables on schedule.

(2) A contractor review will include a meeting with the Government oversight personnel and the contractor and will provide sufficient documentation of the meeting and proof that issues surfaced were addressed and have been, or are being, resolved. Depending upon the circumstances of the contract, it may be appropriate to have the review conducted at the contractor's office or performance location.

(b) The following are guidelines in developing implementation plans for formal contractor performance reviews:

(1) During the first year of a contract/order valued at \$5 million or more, meetings will be accomplished quarterly. It may be beneficial to have monthly meetings during the first quarter to ensure an effective start to the contract performance.

(2) For contracts and/or task orders between \$1 million and \$5 million for which options exist, annual reviews prior to exercising the option will be conducted.

- (3) For contracts and/or task orders between \$5 million and \$10 million, if the CPARS report documents the contractor is performing above satisfactory level during the first year, performance meetings may be held semiannually at the CO's discretion.
- (4) Contracts and or task orders exceeding \$10M in estimated value will have quarterly meetings notwithstanding the CPARS rating to ensure performance continues to be above satisfactory.
- (c) Written waivers to the policy may be granted by the DCPO on a specific contract; retroactive waivers will not be considered.

Chapter 2443 – Contract Modifications

2443.000 – Scope of chapter.

This chapter prescribes policies and procedures for preparing and processing contract modifications (see FAR Part 43 for related information).

Subchapter 2443.1 - General

2443.101 - Definitions.

2443.101-70 - Effective date.

- (a) For a unilateral change order or administrative change, the effective date will be the issue date of the modification.
- (b) For a change order issued bilaterally to a commercial contract under FAR clause 52.212-4, Contract Terms and Conditions – Commercial Items, (c), the effective date will be the date the modification is signed by both contracting parties or a date agreed upon by the contracting parties.
- (c) For a supplemental agreement, the effective date will be the date the modification is signed by both contracting parties or a date agreed upon by the contracting parties.
- (d) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice will be the same as the effective date of the initial notice.
- (e) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date will be the same as the effective date of the termination for default.
- (f) For a modification confirming the termination CO's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date will be the same as the effective date of the previous letter determination.

2443.101-71 - Modification Authorities.

- (a) Every modification to a contract requires an applicable authority. The authority is normally expressed in the contract via a contract clause (*e.g.*, contract FAR clause 52.243-1 Changes—Fixed-Price). Occasionally, the authority may arise outside the contract, most commonly via statutory changes affecting the contract terms and conditions or other applicable FAR authorities (*e.g.* FAR Part 6 for out of scope modifications).
- (b) COs may NOT cite FAR 43.103(a) or (b) as the authority for issuance of a modification. These subparts of the FAR are general descriptions of the types of modifications that may be issued but do not provide the authority to issue a modification against any particular contract. “Mutual

Agreement of the Parties” is not an authorized method of modifying a contract if another authority exists.

(c) Block 13 of the SF 30 allows the CO to select four different descriptions of the type of modification issued as follows:

- (1) Change Order,
- (2) Administrative Change,
- (3) Supplemental Agreement, or
- (4) Other.

(d) In completing the modification, the CO must ensure that Block 13, appropriate to the modification type, is selected and the authority that is contained within the contract is identified in the associated block in Section 13.

2443.103 - Types of contract modifications.

2443.103-70 - Usage of contract modification types and examples of applicable modification authorities.

(a) Example of a *unilateral* contract change modification.

(1) *52.243-1 Changes – Fixed Price*. The CO may make unilateral changes to fixed price supply contracts for:

- (i) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;
- (ii) Method of shipment or packing; or
- (iii) Place of delivery.

(2) *Alternate I* – If Alternate I to FAR clause 52.243-1, Changes – Fixed Price, is included in the contract, the CO may make unilateral changes to a fixed price service (non-Architectural and Engineering (A&E)) contract for:

- (i) Description of services to be performed;
- (ii) Time of performance (*i.e.*, hours of the day, days of the week, etc.); or
- (iii) Place of performance of the services.

(3) *Alternate II* - If Alternate II to FAR clause 52.243-1, Changes – Fixed Price, is included in the contract, the CO may make unilateral changes to a fixed price non-A&E service and supply contract for:

- (i) Description of services to be performed;
- (ii) Time of performance (*i.e.*, hours of the day, days of the week, etc.);
- (iii) Place of performance of the services;
- (iv) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government, in accordance with the drawings, designs, or specifications;
- (v) Method of shipment or packing of supplies; or
- (vi) Place of delivery.

(4) There are many other Alternates available to this clause specific to various types of contracts. The clause itself states the types of unilateral changes that the CO may make under the authority of the clause and alternate.

(5) When issuing a modification under the authority of this clause, using Alternate I, the CO will ensure the block for Change Order is checked in Block 13 and insert Contract FAR Clause 52.243-1 Changes – Fixed Price, Alternate I as the authority.

(6) The Block in E of the SF 30 must state that the contractor is NOT required to sign the modification since the modification is issued unilaterally.

(b) Example of a *unilateral* contract option modification authority.

(1) 52.217-9, Option to Extend the Term of the Contract.

- (i) Under this FAR clause, the CO must provide appropriate notice, in writing, within specified timeframes that the Government anticipates extending the term of the contract.
- (ii) Thereafter, the modification to extend the contract will cite FAR clause 52.217-9, Option to Extend the Term of the Contract, as the authority for issuance of the modification and the modification will be issued unilaterally pursuant to the language contained within the clause.
- (iii) When issuing a modification under the authority of this FAR clause, the CO will ensure the block for Other is checked in Block 13 and insert contract clause 52.217-9, Option to Extend the Term of the Contract, as the authority.

(iv) The Block in E of the SF 30 must state that the contractor is NOT required to sign the modification since the modification is issued unilaterally.

(c) Example of a *bilateral* contract change modification authority.

(1) 52.212-4, *Contract Terms and Conditions – Commercial Items*, paragraph (c) Changes. Under a commercial contract, any changes using FAR clause 52.212-4, *Contract Terms and Conditions – Commercial Items*, as the contractual authority, must be issued by written agreement of the parties (bilaterally).

(i) When issuing a modification under the authority of this FAR clause, the CO will ensure the block for “Change Order” is checked in Block 13 and insert contract clause FAR 52.212-4, *Contract Terms and Conditions – Commercial Items*, paragraph (c) Changes, as the authority.

(ii) The Block in E of the SF 30 must state that the contractor IS required to sign the modification since the modification is issued bilaterally.

(2) Modifications incorporating changes pursuant to a Changes clause are negotiated and issued bilaterally.

(d) Example of an *administrative change* modification authority.

(1) The CO may need to change the paying office. This would constitute an administrative change to the contract since it does not affect the substantive rights of the parties. No specific authority need be cited for this type of change. However, the CO will ensure that the Block 13 citing an administrative change is checked. The CO must also ensure that the Block in E of the SF30 must state that the contractor is NOT required to sign the modification since the modification is issued unilaterally.

(2) Note that simple funding modifications are not administrative modifications and will be issued with Block 13 citing “other” checked and the appropriate contractual clause that provides authority for adding funding cited.

(e) Example of Mutual Agreement of the Parties.

Contract Closeout and deobligation of unliquidated residual funds after physical completion of the contract. All actions which substantially affect the rights of the parties (*e.g.*, obligating funds in support of final invoice payment or de-obligation of excess funds after the final invoice) must be effected through a bilateral modification. A modification which attempts to recognize the release of claims and obligations on the part of both the contractor and the government (*i.e.*, closeout modification) should properly be bilaterally executed using the authority of Mutual Agreement of the Parties.

2443.105 - Availability of funds.**2443.105-70 – Modification pricing.**

Contract modifications, including changes that could be issued unilaterally, must be priced before their execution. If firm pricing cannot be established without adversely affecting the interest of the Government, a ceiling price must be negotiated. The CO will prepare a memorandum for record documenting his or her decision to issue an unpriced modification. The memorandum will be maintained in official procurement file within the acquisition management system.

Subchapter 2443.3 – Forms**2443.301 - Use of forms.**

2443.301-70 - Standard Form (SF) 30. Modifications are issued using the SF 30, Amendment of Solicitation/Modification of Contract.

(a) On rare occasions when the CO must justifiably direct changes to contracts through oral or electronic messages, a formal written modification using an SF 30 will be effected and issued within 2 business days to confirm the change.

(b) The CO will ensure that Block E on the SF 30 appropriately identifies whether the contractor IS (bilateral modification) or IS NOT (unilateral modification) required to sign the modification. The CO will ensure, for bilateral modifications, that the modification is signed by a contractor representative authorized to bind the company. The executed modification will be maintained in the acquisition management system.

2443.301-71 – Price Negotiation Memorandum (PNM).

(a) *General requirement.* The CO must complete a PNM for each:

(1) Modification that changes the contract value when the absolute value of the negative and positive price changes added together exceed the Simplified Acquisition Threshold (*e.g.*, a +\$80,000 change and a -\$80,000 change = an absolute change of \$160,000 where the SAT is \$150,000) or makes substantive changes to the contract's work description or other non-price requirements (*e.g.*, supplemental agreements pursuant to a change order). Modifications that do not involve negotiated changes to contract price or work (*e.g.*, administrative change, or change order – but not the follow-up supplemental agreement) are exempt from this requirement; and

(2) COs must complete a PNM when exercising the FAR clause 52.217-8, Option to Extend Services, if they did not previously evaluate the pricing.

(b) The CO or a higher-level OCPO official may require a PNM for awards and modifications of lesser value based upon the specific circumstances of the individual contract or modification.

(c) *PNM template*. The PNM will be prepared using the mandatory template available on the OCPO intranet site at:

http://hudatwork.hud.gov/HUD/cpo/po/arc/regs/aquisition_templates/acq_templates

(d) *Approval*. The CO is the signature level for the PNM.

(e) *Filing*. All PNMs will be maintained in the official procurement file within the acquisition management system.

2443.301-72 - Description of modification.

(a) SF 30, Block 14 is the narrative description of the modification. The modification description should include as appropriate:

- (1) Identification of the contract section being modified;
- (2) Reason for the modification;
- (3) Description of the modification to the contract being made. For example, delete contract section _____ and replace with the following text: _____;
- (4) Indication of the impact of the modification on the overall total contract price by inserting one of the following entries: (i) Total contract price increased by \$ (ii) Total contract price decreased by \$ (iii) Total contract price unchanged;
- (5) When removing, reinstating, or adding funds, identification of the contract items and accounting classifications;
- (6) When reflecting a determination by the CO of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to:
 - (i) A reference to the letter determination;
 - (ii) A statement of the net amount determined to be due in settlement of the contract; and
 - (iii) Incorporation of a release of claims as a result of a change to the contract.

(b) The CO will address funding on *all* modifications.

- (1) Any modification to an existing award (contract, order, IAA, BPA, etc.) must delineate the correct obligated and ultimate/ceiling values. To that extent, every modification will include the following sentences:

“This modification (1) increases (or decreases) the obligated amount of the [contract, order, etc.] by \$xxxx, from \$xxxxx to \$xxxxx; (2) increases (or decreases) the base and exercised options value of the [contract, order, etc.] by \$xxxx, from \$xxxxx to \$xxxxx; and (3) increases (or decreases) the base and all options value of the [contract, order, etc.] by \$xxxx, from \$xxxxx to \$xxxxx.”

(2) For modifications which have no change in one or more of the above values, the modification will state:

“This modification makes no change in the [obligated/base and exercised options/base and all options] amount of \$xxxx.”

(3) For vehicles where no obligations are made on the base award (*e.g.* BPA, IDIQ contract, etc.), it is not necessary to include the statement regarding obligation values.

(c) Modifications to extend services.

(1) When modifying an award to extend services, the similar language will be used to clearly state the revised period of performance as well as any changes to the final completion date.

“This modification extends (or reduces) the current period of performance from [Month Day Year] to [Month Day Year]; this modification extends (or reduces) the ultimate completion date from [Month Day Year] to [Month Day Year]”

(2) For modifications which have no change in either of the above periods, the modification will state:

“This modification makes no change in the [current period of performance/ ultimate completion date] of [Month Day Year].”

2443.301-73 - Use of HUD’S Acquisition Management System to issue modifications.

(a) COs will not issue modifications outside of the acquisition management system except in urgent situations making manual processing necessary. All manual actions must be approved in advance by the ACPO. All manual awards will be reported and tracked on the OCPO SharePoint site. Should a CO need to issue a modification against a closed contract, the CO must contact the system administrator to have the contract re-opened so the modification can be issued in the acquisition management system.

(b) A signed modification must be uploaded into the acquisition management system.

(c) A requisition for modification is usually generated by the COR for modifications, but the CO may issue modifications without a requisition for modification when necessary.

(d) CO must review the “Description” field of all modifications prior to processing to ensure the description adequately reflects the modification requirement.

Subchapter 2443.70 – Review and Approval of Proposed Modifications

2443.7001 – OCPO approvals.

See Handbook 2401.7001 for the requirements for internal OCPO approvals of modifications.

2443.7002 – Legal review of modifications.

See Handbook 2401.7003 for the requirements for legal review of modifications.

Chapter 2444 – Subcontracting Policies and Procedures [RESERVED]

Chapter 2445 – Government Property

2445.000 – Scope of chapter.

This chapter prescribes policies and procedures for maintaining Government property supplied to contractors and reporting, redistributing, and disposing of contractor inventory (see FAR Part 45 for related information). For information concerning planning, required justifications and evaluating the use of Government property, facilities and equipment see Chapter 2407.105(b)(15)-70.

Subchapter 2445.1 - General**2445.104 - Responsibility and liability for Government property.****2445.104-70**

All Government furnished, and contractor acquired personal property in possession of a contractor must be maintained, inventoried, accounted for, and disposed of in accordance with FAR Part 45 and HUD Handbook 2200.1, Chapter 9, Personal Property Management.

(a) Responsibilities.

(1) The Office of Facilities Management Services (OFMS) within the Office of Administration oversees HUD's personal property management policy development, implementation, and administration. OFMS is also responsible for making all required property management reports to the GSA.

(2) OCPO is responsible for assisting and informing OFMS regarding the procurement of all accountable personal property.

(3) The responsibility for providing and monitoring contractor use of GFP is delegated to the COR. The COR must:

(i) Assure that contractors meet the custodial responsibilities under the applicable government property clause specified in the contract (see FAR 45.5). Such responsibilities include conducting and maintaining an annual inventory of GFP property for the duration of the contract.

(ii) Advise contractors and the CO on the disposition of the property when contracts have been completed.

(iii) Annually, submit to the CO an inventory of all property provided to, or acquired by, contractors that was determined to be surplus and subsequently was transferred to non-Federal Government entities. The inventory will include the description, quantity, acquisition cost, and condition of each property item.

(4) The CO will:

(i) Ensure that all annual contractor inventories are placed in the contract file; and

(ii) Provide a copy of each annual contractor property inventory to:

(A) The Department's Office of the Chief Administrative Officer, Space and Assets Management Division, Personal Property Branch (for Headquarters contracts), or

(B) The Operations Division within the Office of Human Capital Field Support (for field-based contracts).

(b) Inventories. Contractor inventories will include:

(1) Property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the government and which is not consumed or delivered to the Government in the performance of the contract.

(2) Property that the government is required or has the discretion to take over under any type of contract as a result of changes in the specifications, or termination of the contract prior to fulfillment.

(3) Government-furnished property that exceeds the amount needed to complete the performance of a contract.

Chapter 2446 – Quality Assurance

2446.000 – Scope of chapter.

This chapter prescribes policies and procedures to ensure that supplies and services acquired under HUD contracts conform to the contracts' quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements (see FAR Part 46 and HUDAR Part 2446 for related information).

Subchapter 2446.4 - Government Contract Quality Assurance

2446.401 – General.

Contractor performance under all HUD performance-based contracts for services (see FAR Subpart 37.6 and Handbook Subchapter 2437.6) must be assessed using a quality assurance surveillance plan (QASP).

2446.470 – Quality control and QASP.

(a) *Contractor responsibility for quality control.* Contractors are primarily responsible for ensuring quality control over their contracts. Generally, contractors develop and use quality controls appropriate to the contract's requirements (type of products or service, contract type, etc.). Under HUD performance-based contracts for services, contractors must develop and use a quality control plan. These plans are for the contractor's use in monitoring its own performance (*i.e.* reports are not made to HUD showing progress or other compliance with the plans).

(b) *Purpose of the QASP.* The QASP establishes the methodology the Government will use to monitor and evaluate contractor performance and ensure the objectives of the contract are met. The QASP is used in performance-based contracts to assess the quality, quantity and timeliness of supplies delivered and services performed by the contractor. It does not evaluate, or even consider, the steps taken or procedures used to produce products or perform services. In other words, like performance-based contracts, QASPs are concerned with results not processes. The QASP must fully incorporate and delineate the what, when, and who relative to the performance of contract surveillance activities.

(1) Contractors are contractually required to perform services that meet the quality, quantity, and timeliness standards set forth in the contract. Implicit in that contractual requirement is the requirement for the contractor to establish and use appropriate quality controls which are typically documented in the contractor's quality control plan.

(2) The Government, also, must ensure that the services conform to the contract's quality, quantity, and timeliness requirements. To do this, the Government periodically evaluates the contractor's performance using appropriate assessment methods that may be enhanced by the use of incentives (either positive or negative) tied to performance. The QASP is the Government's counterpart to the contractor's quality control plan.

(3) The QASP details how and when the Government will survey, observe, test, sample, evaluate, and document contractor performance. It also outlines the procedures to be taken

against the contractor for deficient performance, for example, issuing discrepancy reports that require corrective action responses or taking deductions from payments in FFP contracts for performance shortfalls.

(4) It also is used for determining if and when the Government needs to intercede and perhaps terminate a contract, as well as for determining if the Government should exercise contract options. Options may only be exercised after determining that the incumbent's performance under the current contract is satisfactory, the requirement still exists and market research reveals that the contract pricing continues to be fair and reasonable for the contracted services.

(5) The QASP may be adjusted to address a contract risk not originally anticipated or to remove discussion of a risk that has been eliminated.

(c) Developing the QASP.

(1) Responsibilities.

(i) *COR*. The COR has lead responsibility for developing the QASP. The IAT and contract administration team may also participate.

(iii) *CO*. The CO is ultimately responsible for ensuring that a QASP, appropriate for the contract, is developed and used throughout the contract.

(2) What to consider when developing the QASP.

(i) When developing the QASP, the COR will consider the following factors and questions:

(A) The nature of the proposed contract service requirements. Is the requirement new or does HUD have significant history purchasing the services? Are the services highly technically complex, state-of the-art, or cutting edge in nature?

(B) The availability of in-house expertise. Does the program office have sufficient in-house expertise to develop the QASP (*e.g.*, writing the PWS, monitoring similar services, writing similar performance requirements and QASPs)? If the expertise does not reside in the program office, is such expertise available elsewhere in the Department?

(ii) Use of SOO (see FAR 37.602). In the rare instance when a SOO is used instead of a PWS, the CO will require offerors to develop the proposed PWS and the proposed QASP in response to the SOO in the solicitation. After award, the COR will take the contractor's proposed QASP, review it, make changes as necessary, and then finalize their official QASP.

(iii) The QASP must be prepared in conjunction with the preparation of the PWS and be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract.

(3) *Content of the QASP.*

(i) There is no single prescribed format for the QASP. However, the successful contractor's executable solution must be complemented by a QASP that the Government can follow to verify that the contractor's promised level of performance, as defined in the PWS, is achieved. Each element must be tied to the specific objectives from the Government's performance requirement. FAR Subpart 46.4 provides general guidance on the QASP. A suggested format for a QASP includes, at a minimum, the areas listed below. These may be expanded to suit the type of work being assessed.

(A) The performance metrics;

(B) An assessment schedule or frequency;

(C) A summary of the efforts/outputs under surveillance, including identification of the specific PWS paragraph or section addressed by each surveillance activity;

(D) The methodology used to evaluate performance;

(E) The names and organizations of the personnel responsible for the performance objective;

(F) Any incentives and disincentives that may be applied and how to assess them;

(G) Roles and responsibilities of all parties involved;

(H) Procedures to be followed for assessment and acceptance;

(I) Performance Requirements Summary that sets forth each performance objective (requirement of the contract), the acceptable performance standard, the method of performance assessment, and any incentives (positive and/or negative);

(J) Sample contract discrepancy report if negative incentives are used;

(K) Customer complaint or customer survey procedures, if used; and

(L) Certification of acceptance of services.

(ii) The Performance Requirements Summary (PRS) identified as an element of the QASP above must be included in the solicitation and resultant contract so the contractor knows how the Government will assess performance. However, the PRS does not include the specific description of the monitoring processes that the Government will use. The PRS summarizes the QASP, often in tabular or matrix form. The PRS lists each performance objective or activity that will be measured (*e.g.*, responding to service calls), the acceptable quality standard for the objective/activity (*e.g.*, 95% of service calls responded to within the time period allotted in the contract), the method of surveillance the Government will use to assess the contractor's performance (*e.g.*, review of contractor's service call logbooks and customer feedback), and any negative/positive incentives (*e.g.*, 10% reduction in payment for service calls in any month when the contractor fails to respond on time to less than 95% of the calls received during that month).

(4) Each PWS/SOW must be carefully reviewed to determine critical areas to be assessed. The QASP will be prepared concurrent with the performance work statement because it is during this time the government is determining specific requirements, the criticality of each required task, the method to assess performance, and whether positive or negative incentives are appropriate. In designing the QASP, the COR will consider:

Contract's Performance Standards What is the most effective way to assess the contractor's performance against the performance standards in the contract?

Criticality/Risk The risk assessment results to determine:

How critical the task or activity is to the accomplishment of the contract's objectives. (Does it need to be assessed?)

How critical the assessment of the performance under that task is. (Is it worth the Government's time and effort to assess it?)

Commercial Practices Whether there are common commercial practices for assessing a particular area of performance (*e.g.*, services). (Do the proposed assessment methods reflect or use those common commercial practices? If not, why not?)

Whether re-performance of services is practical or reasonable.

Frequency of assessment How often will services and products be assessed?

Availability of Government Personnel Who will perform assessments? Are an adequate number of the appropriate personnel available?

What incentives should be used	How should negative and positive incentives be structured? (What tolerances (<i>e.g.</i> , error rate) should be used, and how should they be quantified?)
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(d) *QASP monitoring methods.*

(1) The objective of contract surveillance is to monitor contractor performance to assure the services received are consistent with contract quality requirements and received in a timely manner. To be effective, contract surveillance requires appropriate and immediate on-site monitoring of the services being performed. On-site monitoring will include periodic verification and analysis of the services performed. The effectiveness of contract surveillance depends on keeping the CO informed of deviations from the contractual requirements in a timely manner. Surveillance will then be used to determine if and when to intercede and terminate a contract, when to take other appropriate corrective actions, and if to exercise established option periods.

(2) The surveillance procedures must be discussed at the post-award orientation meeting to ensure understanding by all parties. Because it is developed and used by the Government, the QASP can be modified at any time. The decision to change the plan depends largely on the contractor's demonstrated capability to carry out its quality control plan effectively.

(e) *QASP Composition and Method.*

(1) The QASP will address the following topics:

- (i) Purpose;
- (ii) Roles and responsibilities;
- (iii) Procedures;
- (iv) Methods of assessment;
- (v) Successful performance and remedies;
- (vi) Certification of services;
- (vii) Sample of contract discrepancy report;
- (viii) Complaint procedures and training instructions; and
- (ix) Abbreviations.

(2) At a minimum, the QASP must:

(i) Provide a schedule for periodic on-site inspections, floor checks, and audits of contractor's billings to ensure that costs being charged to the contract are legitimate and reasonable.

(ii) Specify how often (weekly, monthly, etc.) inspections will occur.

(iii) Identify what will be checked during an inspection, how it will be checked, and what type of sample will be used (random, 100 percent, etc.). For example, "Once every month, technical bulletin revisions will be inspected to assess the quality of work and progress toward completion. The revisions will be read for quality and accuracy. Random sampling will be done as work progresses. Near contract completion, a 100 percent inspection will be done."

(iv) Describe the method that will be used for checking cost-type contract invoices to ensure that only those labor categories used for the performance of a task or project is invoiced to the Government.

(v) Describe how material or supplies will be delivered and accepted under a cost or fixed-price type contract.

(vi) Identify the frequency of inspections of time cards and payroll records.

(vii) Specify the policy for delivery and acceptance procedures.

(viii) For cost type contracts, explain how the CO will ensure that the prime contractor has obtained adequate competition when acquiring materials. For example, state in the QASP that contractor's acquisition of materials by competition will be checked for charges over a certain amount of money.

(ix) Explain how the CO will ensure that progress payments on fixed price contracts do not exceed the quality and quantity of work completed and that payment is made in accordance with the progress payment clause. For example, state that the quantity and quality of work will be inspected to determine if the work completed to date justifies the amount of payment to be made.

(f) Effective use of the QASP, in conjunction with the contractor's quality control plan, will allow the Government to evaluate the contractor's success in meeting the specified contract requirements. Surveillance will be increased if the contractor begins to experience problems or difficulties in performance, financial strength, management, quality assurance, or accounting system.

(g) *Types of assessment methods.* Every QASP must identify the assessment method to be used. There is a variety of commonly used assessment methods and more than one method can be used for a single contract. A combination of methods should be used whenever appropriate. Some commonly used methods are:

Random Sampling	This is a statistically based method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments is found to be acceptable. Random sampling is the most appropriate method for frequently recurring tasks, and works best when the number of instances is large and a valid sample can be obtained.
Periodic Sampling	This is similar to random sampling but is planned at specific intervals or dates. It may be appropriate for tasks that occur infrequently. It allows for assessing confidence in a contractor without consuming a significant amount of time.
Trend Analysis	This method will be used regularly and continually to assess performance over time. It is helpful for the Government to build a spreadsheet or database from data that is gathered through performance assessment. Contractor-managed metrics may provide added information needed for analysis.
Customer Feedback and Surveys	These obtain firsthand information from actual users of the services. This method will be used prudently because it tends to be a complaint-oriented, may be subjective in nature, and may not always relate to actual requirements of the contract. Procedures for handling customer complaints or customer surveys must be established if either method is used. Procedures (including any forms or formats to be used) and instructions for their use must be included in the QASP. Surveys must address only actual requirements of the contract.
Third-party Audits	This method may be used when contractor evaluations independent of the Government and the contractor are available.
Review of Contractor Records	This method involves reviewing contractor logs, records and reports to assess compliance with the requirements of the contract (<i>e.g.</i> , help desk logbooks).

(h) *Documentation.* The QASP will describe what is to be documented and how. Each assessment activity will be fully documented as it is conducted. The documentation of the assessment activity constitutes an official record and it is critical that it be accurate. The assessment process and the resultant documentation will have a bearing on any incentives applied and on the overall evaluation of the contractor's performance. The results of the final performance evaluation will have an impact on the contractor's ability to compete for future Government contracts.

(i) *Updating the QASP*. The QASP may be updated as needed during contract performance.

2446.471 - Incentives.

(a) Performance incentives are frequently given little attention when developing a performance based requirement. Customers often say they have no funding for positive incentives. Frequently, false “incentives” are included to be able to “check the block”. Meaningful incentives are the backbone of the performance based contract and must be thoughtfully considered and implemented.

(b) Incentives are used when they will induce quality performance. Incentives may be positive, negative, or a combination of both. Incentives may be monetary or non-monetary. They are applied selectively to motivate contractor efforts that might not otherwise be emphasized, and to discourage inefficiency. Incentives apply to the most important aspects of the work, rather than every individual task. Incentives correlate with results.

(c) *Negative incentives*. Negative monetary incentives, or reductions, are deducted from the amount to be paid to the contractor for the work. Negative incentives are not considered a penalty, nor may they be used as such. Rather, the intent is that the Government will not pay for services that do not conform, do not meet performance standards, or have not been properly rendered. The CO is the final reviewer and approval authority for all negative monetary incentives (reductions).

(1) Examples of when negative incentives might be appropriately used include:

- (i) When performance is below the minimum standard, x% of that periods payment will be withheld.
- (ii) When performance is below the minimum standard, require the contractor to re-perform the service at no cost to the Government.
- (iii) When performance is below the minimum standard for x consecutive months, increase surveillance or contractor reporting.

(2) Negative monetary incentives, or reductions, are deducted from the amount to be paid to the contractor for the work. They are not merely deducted from the incentive pool that may have been established to pay positive incentives. The CO is the final review and approval authority for all negative monetary incentives (reductions). Prior to any negative incentive being enforced, the following minimal documentation must be submitted to the CO:

- (i) The PRS setting forth the standard;
- (ii) The performance standards established;
- (iii) The procedures used to evaluate the work;

- (iv) A description of how the performance standard was not met;
 - (v) The contractor's agreement with, or rebuttal of, the negative performance assessment; and
 - (vi) The amount of the reduction to be taken from the contractor's price for the work.
- (3) Following review of all documentation submitted, the CO will make the final determination to enforce the negative incentive.
- (4) Applying negative incentives can have other impacts upon a contract, including, but not limited to, the term of the contract, the exercise of future options, and the contractor's periodic/final performance assessment.

(d) *Positive incentives.* Positive incentives are applied when performance meets the performance standards established in the contract. Performance standards are established after consideration of the minimum acceptable standards or average acceptable standards based on historical information, and when such performance is desired by and deemed of benefit to the Government. As an example, if the PWS requires a contractor to have students complete a course evaluation after taking the contractor's training course and historical information shows that an acceptable evaluation score is 4.0, the Government may want to consider positively incentivizing a performance standard of an average evaluation score of 4.5 so that the quality of course materials and delivery increases and longer-term learning occurs. Contractors may not be rewarded for simply meeting minimum standards of contract performance. The incentive amount corresponds to the difficulty of the task required, but may not exceed the value of the benefits the Government receives. The procedures used to determine such performance, and any approvals that may be necessary, and how the incentive will be paid are included in the QASP and the PRS.

(1) Examples of when positive incentives would be appropriately used include:

- (i) When performance meets the minimum standard, pay x% of monthly payment into a pool. At the end of xx months, pay contractor amount accrued in pool.
- (ii) When performance meets the minimum standard, pay x% of monthly payment into a pool. When pool has reached \$xxxx, pay contractor amount accrued in pool.
- (iii) When performance meets the minimum standard for xx consecutive months, reduce Government oversight or contractor reporting, as appropriate.

(2) When contemplating the use of positive incentives consider the following:

- (i) Will enhanced performance provide additional value to the Department?
- (ii) Which areas of the requirement would benefit most from enhanced performance?

(iii) Which areas do not need added incentives, or which areas can do without them?

(iv) How much is the Department willing to pay to achieve a level of performance beyond the performance standard?

(v) Will the incentives affect timeliness or schedules in a positive or adverse way? Is the incentive affordable?

(3) When positive monetary incentives will be used, funds must be obligated on the contract to pay such incentives. The CO is the final review and approval authority to pay such incentives. Documentation required to be submitted to the CO prior to payment of any positive incentive will include, at a minimum:

(i) Information from the PRS setting forth the standard,

(ii) The performance standards established,

(iii) The procedures used to evaluate,

(iv) An explanation as to how the performance standard was exceeded and the benefit derived by the Department, and

(v) The amount of the incentive to be paid to the contractor.

(e) *Documentation format.* A mandatory format for documenting contractor performance under incentives has not been established. If the CO requires a specific format, the CO will prepare and provide the format to the COR. Otherwise, the COR and CO will agree on the format to be used.

(f) The CO will not use Contractor Performance Assessment Reporting System (CPARS) evaluations as a positive or negative measure to incentivize performance elements spelled out in the Performance Requirements Summary.

Chapter 2447 – Transportation [RESERVED]

Chapter 2448 – Value Engineering [RESERVED]

Chapter 2449 – Termination of Contracts

2449.000 – Scope of chapter.

This chapter prescribes policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default (see also FAR Part 49 and HUDAR Part 2449).

Subchapter 2449.1 - General Principles

2449.101 – Authorities and responsibilities.

2449.101-70 - Authorities and responsibilities.

The CO will ensure that all termination actions are posted to the Termination Register on the OCPO SharePoint site.

2449.111 – Review of proposed settlements.

2449.111-70 - Review requirements.

COs must obtain a review of proposed settlement agreements by an OCPO official one level above the CO and a legal review by legal counsel as prescribed in Handbook 2401.7003(i)(2)(ii)(B).

Subchapter 2449.4 – Termination for Default

2449.402 – Termination of fixed-price contracts for default.

2449.402-3 – Procedure for default.

(a) The CO will provide the information described in Handbook 2401.7003(i)(2)(ii)(A) when obtaining the legal review of a proposed termination action as required by FAR 49.402-3.

2449.402-7 – Other damages.

(b) The CO will provide the information described in Handbook 2401.7003(i)(2)(ii)(C) when obtaining the legal review of other ascertainable damages, including administrative costs to be assessed against a contractor as a result of a default, in accordance with FAR 49.402-7.

Subchapter 2449.6 - Contract Termination Forms and Formats

2449.604 - Release of excess funds under terminated contracts.

2449.604-70 - Mutual Agreement of the Parties – Contract closeout, deobligation of unliquidated residual funds under terminated contracts.

All actions which substantially affect the rights of the parties (*e.g.*, obligating funds in support of final invoice payment or de-obligation of excess funds after the final invoice) must be effectuated

through a bilateral modification. A modification which attempts to recognize the release of claims and obligations on the part of both the contractor and the government (*i.e.*, closeout modification) must properly be bilaterally executed. (See Handbook 2443.103-70(b)(2))

Chapter 2450 - Extraordinary Contractual Actions and the Safety Act [RESERVED]

Chapter 2451 – Use of Government Sources by Contractors [RESERVED]