

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2403, 2409, 2436, 2439, 2442, 2452 and 2453

[Docket No. FR-4291-P-01]

RIN 2535-AA25

## HUD Acquisition Regulation; Miscellaneous Revisions

**AGENCY:** Office of the Chief Procurement Officer (CPE).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) to implement changes applicable to HUD's procurement activities made in the Federal Acquisition Regulation since the HUDAR's last issuance. It would also implement miscellaneous HUD procurement rules as described in the Supplementary Information below.

**DATES:** Comment Due Date: October 22, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000. Communication should refer to the above docket number and title. Facsimile comments will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Frederick Graves, Policy and Field Operations Division, Office of Procurement and Contracts (Seattle Outstation), U.S. Department of Housing and Urban Development, Seattle Federal Office Building, 909 1st Avenue, Seattle, WA 98104-1000, (206) 220-5122, ext. 3450. Hearing or speech-impaired individuals may call (206) 220-5185 (TTY) or 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

### SUPPLEMENTARY INFORMATION:

#### Background

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

Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998 (63 FR 54723); and the general authorization in FAR 1.301.

The most recent version of the HUDAR was published as a final rule on May 1, 1996 (61 FR 19467). This proposed rule amends the HUDAR to reflect HUD's implementation of changes in the FAR and Federal statutes applicable to HUD's procurement activities. Please note that the Department is also publishing, elsewhere in this issue of the **Federal Register**, an interim rule for comment making other changes to the HUDAR.

Section 2403.670 is revised pursuant to section 4301 of the Federal Acquisition Reform Act of 1996, (Public Law 104-106, 110 Stat. 642, approved February 10, 1996) (1996 FAR Act) to delete the requirement for a certification regarding Federal employment by offerors and contractors.

In accordance with Section 4301 of the 1996 FAR Act, the Department is removing, via this proposed rule, two of its three previously existing regulatory certification requirements that are not statutorily based, viz., 2452.203-71, "Certification Regarding Federal Employment" and 2452.209-71, "Organizational Conflicts of Interest Certification." The Chief Procurement Officer has made a determination to retain the certification requirement at Section 2426.703 and the related solicitation provision at 2452.226-70, Certification of Status as a Minority Business Enterprise. The CPE has determined that the Department needs to maintain its capability to provide accurate, timely reporting on its minority contracting activity statistics. This certification is the most efficient means for obtaining the data needed for making such reports.

In section 2439.107 a new paragraph (b) is added to prescribe the use of a computer virus security clause in contracts for information technology.

Section 2442.1106 is revised to replace the Department's current requirement for the use of a specific project planning and monitoring process for certain technical services contracts with a generic requirement for an acceptable planning and monitoring system. The revision allows contractors

to develop their own system or use commercially available systems that are acceptable to the contracting officer. This also permits the use of automated planning and monitoring systems to streamline those functions. HUD's current system is not automated.

Section 2452.203-71 is removed to delete the requirement for the non-statutory certification (see comments under 2403.670 above).

Section 2452.209-70 is replaced with a new version of the solicitation provision in which the contracting officer identifies the potential areas for organizational conflicts of interest. This reflects the guidance provided in FAR Subpart 9.5.

Section 2452.209-71 is revised to better conform to the requirements of FAR Subpart 9.5, viz., to place the burden on the contracting officer of describing any potential organizational conflict of interest in the contract. The revised clause also prohibits the contractor's performance under future contracts of work using specifications developed by the contractor under the immediate contract. The contracting officer may also impose additional restrictions via this clause. Section 2452.209-71 is also revised pursuant to section 4301 of the 1996 FAR Act to delete the existing requirement for the submission of an organizational conflict of interest certification by all offerors.

In section 2452.215-70, an Alternate III is added to obtain information required of offerors by the provision at 2452.209-72.

Section 2452.239-71 is added in accordance with 2439.107(b). The clause seeks to prevent the knowing submission by a contractor of information technology containing viruses that the contractor should have detected before such submission.

Section 2452.242-71 is revised to describe in generic terms the Department's requirements for project planning and monitoring systems to be used under contracts exceeding \$500,000 for technical or professional services for work of a developmental or advisory nature. This eliminates the requirement for HUD's previous system which was not automated and permits the use of contractors' own automated planning and monitoring systems to streamline those functions. The forms related to the previous system at 2453.242-70 and 2453.242-71 are removed.

### Findings and Certifications

#### Paperwork Reduction Act Statement

The information collection requirements contained in the HUDAR,

as described in the table below, have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

**REPORTING AND RECORDKEEPING BURDEN:**

Section reference	Number of parties	Annual freq. of requirement (annum)	Est. avg. time for requirement (hours)	Est. annual burden (hours)
HUDAR:				
2452.209-70 .....	350	1	0.5	175
2452.209-72 .....	5	1	1.0	5
2452.215-70 .....	350	1	120.0	42,000
2452.216-72 .....	2	4	2.0	16
2452.219-70 .....	30	1	0.5	15
2452.219-71 .....	30	4	0.1	12
2452.237-70 .....	30	1	4.0	120
2452.237-75 .....	5	1	5.0	25
2452.239-70 .....	40	1	1.0	40
2452.242-71 (initial plan) .....	40	1	8.0	320
2452.242-71 (reports) .....	40	12	8.0	2,880
HUD 770 .....	2	1	0.5	1
Total Reporting and Recordkeeping Burden (Hours) .....				45,609

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

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

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

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

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

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name (HUDAR) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,  
Office of Management and Budget,  
New Executive Office Building,  
Washington, DC 20503

and  
Antoinette Henry, Reports Liaison  
Officer, Office of the Chief  
Procurement Officer, Department of  
Housing & Urban Development, 451—  
7th Street, SW, Room 5262,  
Washington, DC 20410.

**Unfunded Mandates Reform Act**

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

**Regulatory Flexibility Act**

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the DATES and COMMENTS sections in the preamble of this proposed rule.

**Environmental Impact**

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321). Accordingly, a Finding of No Significant Impact is not required.

**Executive Order 12612, Federalism**

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

**Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks**

This rule will not pose an environmental health risk or safety risk to children.

**List of Subjects in 48 CFR Parts 2403, 2409, 2436, 2439, 2442, 2452 and 2453.**

Government procurement, HUD acquisition regulations.

Accordingly, title 48, chapter 24 of the Code of Federal Regulations, is proposed to be amended as follows:

**PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

1. The authority citation for part 2403 continues to read as follows:

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

2. Section 2403.670 is revised to read as follows:

**2403.670 Solicitation provision and contract clause.**

Insert the clause at 48 CFR 2452.203-70 in all solicitations and contracts.

**PART 2409—CONTRACTOR QUALIFICATIONS**

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

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

4. Section 2409.507-1 is revised to read as follows:

**2409.507-1 Solicitation provisions.**

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209-70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

5. Section 2409.507-2 is revised to read as follows:

**2409.507-2 Contract clauses.**

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.209-71, Limitation on Future Contracts, in all contracts above the simplified acquisition threshold. The Contracting Officer shall describe in the clause the nature of the potential conflict, and the negotiated terms and the duration of the limitation.

**PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

6. The authority citation for part 2436 continues to read as follows:

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

7. Paragraph (a)(2) of section 2436.602-2 is revised to read as follows:

**2436.602-2 Evaluation boards.**

(a) \* \* \*

(b) The cognizant program office head for boards appointed at the field level.

\* \* \* \* \*

8. Section 2436.602-4 is revised to read as follows:

**2436.602-4 Selection authority.**

(a) The final selection decision shall be made by the cognizant Primary Organization Head in headquarters, or field program office head.

**PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY**

9. The authority citation for part 2439 continues to read as follows:

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

10. In section 2439.107, a new paragraph (b) is added to read as follows:

**2439.107 Contract clauses.**

\* \* \* \* \*

(b) The contracting officer shall insert the clause at 48 CFR 2452.239-71, Information Technology Virus Security, in solicitations and contracts under which the contractor will provide information technology hardware, software or data products.

**PART 2442—CONTRACT ADMINISTRATION**

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

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

12. Section 2442.1106 is revised to read as follows:

**2442.1106 Reporting requirements.**

(a) All contracts for professional or technical services of a developmental or advisory nature exceeding \$500,000 shall include a requirement for the use of systematic project planning and progress reporting. The Contracting Officer may require the use of such project planning and reporting systems for contracts below the above threshold.

13. Section 2442.1107 is revised to read as follows:

**2442.1107 Contract clause.**

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.242-71, Project Management System, in solicitations and contracts for services as described in 2442.1106 expected to exceed \$500,000. Use of this clause below the stated threshold is at the discretion of the Contracting Officer.

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

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

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

**2452.203-71 [Removed]**

15. Section 2452.203-71 is removed.

16. Section 2452.209-70 is revised to read as follows:

**2452.209-70 Potential organizational conflicts of interest.**

As prescribed in 2409.507-1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

**Potential Organizational Conflicts of Interest (\*\* 1999)**

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

17. Section 2452.209-71 is revised to read as follows:

**2452.209-71 Limitation on future contracts.**

As prescribed in 2409.507-2, the Contracting Officer may insert a clause substantially the same as follows in solicitations and contracts for services:

**Limitation on Future Contracts (\*\*\*\* 1999)**

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

(d) Other restrictions—[Contracting Officer insert description]

(e) The restrictions imposed by this clause shall remain in effect until [Contracting Officer insert period or date].  
(End of clause)

18. A new section 2452.239–71 is added to read as follows:

**2452.239–71 Information technology virus security.**

As prescribed in 2439.107(b), insert the following clause:

**Information Technology Virus Security  
(\*\*\*\*, 1999)**

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

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract:

[product description, part/catalog number, other identifier, and serial number, if any]

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

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate

precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

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

(End of clause)

19. Section 2452.242–71 is revised to read as follows:

**2452.242–71 Project management system.**

As prescribed in 2442.1107, insert the following clause:

**Project Management System (\*\*\*\* 1999)**

(a) Within the time period specified elsewhere in this contract, or as directed by the Contracting Officer, the Contractor shall provide to the GTR and Contracting Officer a project management baseline plan and routine reports showing the Contractor's actual progress against the baseline plan.

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

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

(i) A narrative portion that:

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

(B) Describes the project schedule, including the period of time needed to accomplish each task and activity (see i(B));

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

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

(ii) A graphic portion showing:

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

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

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

(i) A narrative portion that:

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

(B) Identifies significant problems, or potential problems, their causes, proposed corrective actions, and the net effect on contract completion.

(ii) A graphic portion showing:

(A) 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;

(B) 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.

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

(End of clause)

**PART 2453—FORMS**

20. The authority citation for part 2453 continues to read as follows:

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

**2453.242–70 [Removed]**

21. Section 2453.242–70 is removed.

**2453.242–71 [Removed]**

22. Section 2453.242–71 is removed.

Dated: June 7, 1999.

**V. Stephen Carberry,**  
*Chief Procurement Officer.*

[FR Doc. 99–21078 Filed 8–20–99; 8:45 am]

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