

Sunshine Act Meetings

Federal Register

Vol. 49, No. 42

Thursday, March 1, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

The CAB will meet.

[M-401 2/23/84]

TIME AND DATE: 10:00 a.m., March 1, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 41608, Draft final rule to alter the Passenger Origin-Destination Survey by (1) reducing the number of fare basis codes and (2) extending the reporting requirement until sunset. (Memo 1946-A, OC, BDA, BIA, OEA, OCCCA, BCAA, OGC)
3. Docket 41686, Advance Notice of Proposed Rulemaking—Airline Computer Reservations Systems. (OGC)
4. Docket 40489, Big Sky Airlines', Application for compensation for losses at Sheridan, Wyoming. (Memo 2235, BDA, OCCCA, BCAA, OC)
5. Docket 39203, Essential air service for Alaska, Alaska. (Memo 068-E, BDA, OCCCA)
6. Docket EAS-388, Appeal of the City of Lewiston, Idaho, of the essential air service determination for Lewiston, Idaho/Clarkston, Washington. (Memo 077-B, 077-C, OGC, OCCCA, BDA)
7. Commuter carrier fitness determination of Omniflight Helicopters, Inc. (Memo 2236, BDA)
8. Commuter carrier fitness determination of Tropical Helicopter Airways, Inc. (BDA)
9. Docket 41231, Application of Northeastern International Airways, Inc. for a certificate of public convenience and necessity to serve Bermuda. (Memo 2237, BIA, OGC, BALJ)
10. U.S.-People's Republic of China Aviation Relations. (BIA)
11. Aviation Relations with Korea. (BIA)
12. United Kingdom—Report on Consultations. (BIA)

13. ECAC—Discussion. (BIA).

STATUS: 1-9 Open. 10-13 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary. (202) 673-5068.

[FR Doc. 84-5633 Filed 2-28-84; 9:13 am]

BILLING CODE 6320-01-M

2

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NO. 84-4880.

PREVIOUSLY ANNOUNCED DATE AND TIME:

Tuesday, February 28, 1984, 10:00 a.m.

CHANGE IN MEETING: The closed meeting scheduled for this date has been canceled.

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, March 6, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 8, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Eligibility reports for candidates to receive
Presidential primary matching funds
Clearinghouse Advisory Panel meeting
Finance Committee report
Classification action—Establishment of permanent, part-time position—Clerk (typing)
Routine administrative matters

PERSON TO CONTRACT FOR INFORMATION:

Mr. Fred Eiland, information officer, telephone 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 84-5673 Filed 2-28-84; 12:56 pm]

BILLING CODE 6715-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, February 27, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Citicorp Financial Services Corporation, Nashville, Tennessee, an operating noninsured industrial loan and thrift company converting to an industrial bank, for Federal deposit insurance.

The Board further determined, by the same majority vote, the Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Flagship Bank of Orlando, Orlando, Florida, an insured State nonmember bank, for consent to merge with First Fidelity Savings and Loan Association, Winter Park, Florida, a non-FDIC insured institution.

Application of Flagship Bank of Seminole, Sanford, Florida, an insured State nonmember bank, and Sun Bank/Southwest, National Association, Cape Coral, Florida, for consent to transfer certain assets to First Fidelity Savings and Loan Association, Winter Park, Florida, a non-FDIC insured institution, in consideration of the assumption of the liability for deposits made in the Tusawilla Branch, Casselberry, Florida, and the Wekiva Branch, Apopka, Florida, of Flagship Bank of Seminole and the Coralwood Mall Branch, Cape Coral, Florida, of Sun Bank/Southwest, National Association.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: February 27, 1984.
 Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
 [FR Doc. 84-5705 Filed 2-28-84; 1:17 pm]
BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 27, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Planters Bank & Trust Company of Virginia, Augusta County (P.O. Fishersville), Virginia, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Verona Branch of Bank of Virginia, Richmond, Virginia, and for consent to establish that branch as a branch of Planters Bank & Trust Company of Virginia.

Application of First Trust and Savings Company, Davenport, Iowa, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Security State Trust & Savings Bank, Bettendorf, Iowa, and for consent to establish the two offices of Security State Trust & Savings Bank as branches of First Trust and Savings Company.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: February 27, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
 [FR Doc. 84-5706 Filed 2-28-84; 1:17 pm]
BILLING CODE 6714-01-M

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FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 A.M.— March 7, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreement No. 10270-5: Modification of the Gulf European Freight Association Agreement to provide for revised procedures for independent action on rate matters.
2. Modification of Reporting Requirements of Shippers' Requests and Complaints—Notice of Proposed Rulemaking.
3. Special Docket No. 1119: Application of Lykes Bros. Steamship Co., Inc. for the benefit of ADM Milling Company—Consideration of the record.

Portions Closed to the public:

1. Docket No. 79-2: Agreement No. 10293; Docket No. 79-3: Agreement No. 10295—Consideration of the record.
2. Docket No. 82-30: Contract Marine Carriers, Inc.—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.
Francis C. Hurney,
Secretary.

[FR Doc. 84-5739 Filed 2-28-84; 3:50 pm]
BILLING CODE 6730-01-M

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FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 6598, February 22, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Monday, February 27, 1984.

CHANGES IN THE MEETING: One of the items announced for inclusion at this

meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Federal Reserve Bank and Branch director appointments. (This item was originally announced for a meeting on February 21, 1984.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 27, 1984.
William W. Wiles,
Secretary of the Board.
 [FR Doc. 84-5632 Filed 2-28-84; 9:13 am]
BILLING CODE 6210-01-M

7

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10 a.m., Monday, April 9, 1984.

PLACE: Board Room, 712 Jackson Place, NW., Washington, D.C. 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of September 12, 1983 meeting.
4. Election of Chairman.
5. Report of the Chairman.
6. Report of Executive Secretary.
7. Report of General Counsel.
8. New Business.
9. Set date for next meeting in September, 1984.

Portions closed to the public:

1. Selection of Truman Scholars for 1984-85.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, telephone, (202) 395-4831.
Malcolm C. McCormack,
Executive Secretary.
 February 28, 1984.

[FR Doc. 84-4563 Filed 2-28-84; 1:43 pm]
BILLING CODE 9500-01-M

Federal Register

Thursday
March 1, 1984

Part II

Department of Housing and Urban Development

48 CFR Ch. 24

Acquisition Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Ch. 24

[Docket No. R-84-1145; FR-1860]

Acquisition Regulations

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule establishes the Department's acquisition regulations, which implement and supplement the Federal Acquisition Regulations (FAR) jointly promulgated on September 19, 1983, by the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration. The FAR was promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the Department's acquisition regulations is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of policies unique to HUD.

DATES: Effective date is April 1, 1984. Comment due date is April 30, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755-5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background and This Rule

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is the current system of

procurement policies that vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR was published in the *Federal Register* on September 19, 1983 with a scheduled effective date of April 1, 1984. (See 48 FR 42102.) The FAR will be codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies and procedures within the agency, and to include additional policies and procedures, solicitation provisions or contract clauses, to satisfy the specific needs of the agency. The regulations being published today represent the Department's necessary implementation and supplementation of the FAR.

Generally, this rule does not establish new policy. To a large extent, it is the result of: Reformatting the existing HUD Procurement Regulations (41 CFR Chapter 24); removing old portions which would duplicate new FAR coverage of subject matter not previously contained in Federal Procurement Regulations (41 CFR Chapter 1); and, inserting necessary Departmental procedures at those places the FAR requires agency implementation. (Existing regulations in 41 CFR Chapter 24 are superseded by these regulations, but remain in effect in Title 41 for those contracts entered into before the effective date of the new acquisition regulations.)

The Department highlights the following areas which contain new or revised provisions:

- Part 2407—Acquisition Planning
- Part 2409—Contractor Qualifications
- Part 2419—Small Business and Small Disadvantaged Business Concerns
- Part 2426—Minority Business Enterprises and Historically Black Colleges and Universities.

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this rule must remember that lack of coverage of a particular topic in the HUD acquisition regulations (HUDAR) means that the Department accepts the FAR coverage of the topic without need for further implementation.

Procedural Requirements

A. Executive Order 12291. David A. Stockman, Director of the Office of Management and Budget, has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291 in a memorandum dated December 15, 1983 to Don Sowle, Administrator, Office of Procurement Policy and Christopher DeMuth, Administrator, Information and Regulatory Affairs.

B. National Environmental Policy Act. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

C. Regulatory Flexibility Act. Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule contains few changes in current acquisition regulations. To the extent changes are made to current regulations, they are designed to foster and promote participation of small entities in the Department's procurement program.

D. Paperwork Reduction Act. The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments on the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the *Federal Register*.

E. Administrative Procedure Act. Section 553 of the Administrative Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking.

However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP Policy letter 83-2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As described earlier in the Preamble, changes made to HUD's procurement regulations are principally in the areas of format and internal procedures. The internal procedural changes are necessary to implement new policies established by the FAR.

The Department (see 24 CFR 10.1) traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. Although this is the general policy of the Department, we have determined in this instance, for the reasons already stated, that it would be contrary to all interests involved to provide for prior notice and comment in this rulemaking. In addition, the FAR has a scheduled effective date of April 1, 1984. It is imperative that HUD's procurement regulations be effective at the same time as the FAR. For these reasons, the Department is issuing the HUD acquisition regulations as a general rule. Because the Department believes in soliciting comments to the extent practicable, it is accepting comments on these regulations for 60 days after the date of publication. The Department will review all comments and will consider changes to the rule to the extent possible.

F. Department's Semiannual Agenda of Regulations. This rule was listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47418, 47469) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Chapter 24

Government procurement, HUD acquisition regulations.

Accordingly, the Department amends 48 CFR by establishing a new Chapter 24 as set forth below:

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER A—GENERAL

- Part
- 2401 Federal Acquisition Regulation System
- 2402 Definitions of words and terms
- 2403 Improper business practices and personal conflicts of interest
- 2404 Administrative matters
- 2405 Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

- 2407 Acquisition planning
- 2409 Contractor qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

- 2413 Small purchase and other simplified purchase procedures
- 2414 Formal advertising
- 2415 Contracting by negotiation
- 2416 Types of contracts

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

- 2419 Small business and small disadvantaged business concerns
- 2420 Labor surplus area concerns
- 2421 Minority business enterprises and historically black colleges and universities
- 2424 Protection of privacy and freedom of information

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

- 2429 Taxes
- 2432 Contract financing

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

- 2436 Construction and architect-engineer contracts
- 2437 Service contracting
- 2449 Termination of contracts

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

- Sec.
- 2401.000 Scope of part.

Subpart 2401.1—Purpose, Authority, Issuance

- 2401.100 Scope of subpart.
- 2401.101 Purpose.
- 2401.102 Authority.
- 2401.103 Applicability.
- 2401.104 Issuance.
- 2401.104-2 Arrangement of regulations.

Subpart 2401.3—Agency Acquisition Regulations

- 2401.301 Policy.
- 2401.302 Limitations.

Subpart 2401.4—Deviations From the FAR

- 2401.403 Individual deviations.
- 2401.404 Class deviations.

Subpart 2401.6—Contracting Authorities and Responsibilities

- 2401.601 General.

- 2401.601-1 Procurement executive.
- 2401.601-2 Office of Procurement and Contracts.
- 2401.602 Contracting Officers.
- 2401.602-70 Ratification of unauthorized contract awards.
- 2401.603 Selection, appointment, and termination of appointment.
- 2401.603-2 Selection.
- 2401.603-3 Appointment.

Authority. Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as Chapter 24 of the Federal Acquisition Regulation System (48 CFR Chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.102 Authority.

The HUDAR is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the Secretary's delegation effective January 19, 1976, 41 FR 2665, and the general authorization in FAR 1.301.

2401.103 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be

accomplished in accordance with the HUDAR and the FAR.

2401.104 Issuance.

2401.104-2 Arrangement.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR Subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at Subpart 2401.4, Deviations. (The "24" in the number indicates what chapter of Title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number will parallel the FAR part, subpart, section, subsection or paragraph it is supplementing. For example, FAR 1.602, Contracting Officers, does not contain a provision for ratifying unauthorized contract awards. The HUDAR does provide for this. Since the subject matter supplements what is contained in FAR 1.602, the HUDAR section supplementing the FAR is numbered 2401.602-70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with Federal Register standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2401.104-2(c)." Any section of the HUDAR may be formally identified by the section number, e.g., "HUDAR 2401.104-2." In the HUDAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 37.108.

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

In individual cases, proposed deviations from the FAR or HUDAR shall be submitted to the Procurement Executive (see 2401.601-1) for approval or other necessary or appropriate action. A supporting statement shall be submitted with the proposed deviation indicating briefly the nature of the deviation and the reasons for granting the deviation, consistent with FAR 1.402. The contract file shall include a copy of the request submitted and the approval. In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

2401.404 Class deviations.

For deviations which affect more than one contracting action, proposed deviations from the FAR or HUDAR shall be submitted to the Procurement Executive for approval or other necessary or appropriate action. Requests for deviations shall be supported by statements which fully disclose the nature of the deviation and the need there of. The Procurement Executive will consider the proposal on an expedited basis and in the case of a proposed FAR deviation will comply with FAR 1.404.

Subpart 2401.6—Contracting Authority and Responsibilities

2401.601 General.

2401.601-1 Procurement Executive.

The Assistant Secretary for Administration is designated as the Department's Procurement Executive with responsibility for all Departmental procurement policy, regulations and procedures, and for the development of procurement systems, evaluation of systems performance in accordance

with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement systems meet approved criteria.

2401.601-2 Office of Procurement and Contracts.

The Office of Procurement and Contracts, in the Office of the Assistant Secretary for Administration, is responsible for all Departmental procurement except as specified below. The Office of Procurement and Contract also is responsible for awarding all contracts and agreements in support of the Department's Consolidated Supply Program. Such awards will be made under the regulations found at 24 CFR Part 965, Subpart F. These contracts are established for voluntary use by the Public Housing Agencies and Indian Housing Authorities in their purchase of certain supplies and equipment necessary for the operation and maintenance of low-income housing.

(a) *Office of Housing's Acquired Property Program.* Through the Acquired Property Program, the Assistant Secretary for Housing-Federal Housing Commissioner is responsible for entering into and administering all procurement contracts with respect to all procurement of goods and services for the management, repair, improvement, alteration, demolition, maintenance, operation, rental, and sale or other disposition of all real and related property conveyed to or otherwise in the custody of the Secretary under the National Housing Act (12 U.S.C. 1701-1749). This includes the properties held by HUD as mortgagee-in-possession, and the publication of notices and advertisements in newspapers, magazines, and periodicals. This procurement operation is decentralized to specific positions at HUD Field Offices. In addition, the Office of Housing performs contracting functions through its Headquarters staff on all acquired property requirements having national applicability. Headquarters staff is also responsible for issuing internal procedures for the Acquired Property Program.

(b) *Government National Mortgage Association (GNMA).* The President, GNMA exercises procurement authority with respect to requirements related to GNMA's programmatic functions. The HUDAR does not apply to these procurement actions. The President, GNMA, is responsible for issuing GNMA procurement procedures

consistent with standards established by the Procurement Executive.

(c) *Regional Offices.* Procurement of supplies and services for HUD Regional requirements is accomplished at each Regional Office by the Regional Contracting Officer and the Director of the Administrative Services Divisions, Office of Administration.

2401.602 Contracting Officers.

2401.602-70 Ratification of unauthorized contract awards.

Specific delegation has been given Contracting Officers to enter into contractual agreements and create obligations on behalf of the Department. No liability shall be incurred by the Department as the result of actions by its employees (other than Contracting Officers) which lead to unauthorized arrangements for the delivery of goods or services. If such unauthorized arrangements occur they require ratification before payment can be made. This can be avoided usually by sound procurement planning and by involving the Contracting Officer early in the procurement process. If ratification becomes necessary, the request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer. Ratification of unauthorized commitments in excess of \$1,000 shall be signed by the HCA as well as the Contracting Officer. When circumstances warrant, the HCA may establish more stringent ratification procedures.

2401.603 Selection, appointment and termination of appointment.

2401.603-2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider experience, education, training, business acumen, judgment, character, reputation and ethics. In the area of experience, education and training, the following shall be required unless contracting authority is limited to simplified small purchase procedures:

(a) Experience, for appointment of an individual to a position having Contracting Officer authority, shall consist of a minimum of two years experience performing contracting,

procurement or purchasing operations in a government or commercial procurement office. Alternatively, where appointment field, experience in the field may be considered as a criterion for the appointment.

(b) Educational requirements for an individual in a position having Contracting Officer authority shall be, as a minimum, the equivalent of a Bachelor's Degree from an accredited college or institution preferably with major studies in Business Administration, Law, Accounting or related fields. Experience related to the field of procurement involved (e.g., supply construction, etc.), gained in a government or nongovernment procurement office, may be substituted for educational requirements when it is determined in writing and made a part of the appointment files (as stipulated in 2401.603-3(b)) that a potential appointee is otherwise qualified by virtue of extensive contract-related experience or training.

(c) Training requirements of an individual Contracting Officer or an individual appointed to a position having contracting authority shall include successful completion of training courses in Government Basic Procurement of not less than 80 hours and Government Contract Administration of not less than 80 hours. These requirements may be temporarily waived by the Field Office Manager/Supervisor for Contracting Officers serving the Acquired Property Program. Appointees or incumbents not meeting the special training requirements shall be given 24 months to acquire the minimum qualification standards.

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all full-time permanent (FTP) personnel whose primary duties are performed as a Contracting Officer as opposed to the individuals who supervise Contracting Officers, or to individuals who normally spend less than 10 percent of their time in the capacity of a Contracting Officer.

2401.603-3 Appointment.

(a) Appointments below the level of Assistant Secretary shall be made in writing by the Head of the Contracting Activity on a "Certificate of Appointment," SF 1402. Limitations on the scope of the authority to be exercised by the Contracting Officer, other than those contained in applicable laws and regulations shall be entered on the face of the appointment notification.

(b) Field Office Managers or Supervisors will execute a written affirmative statement that the individual, placed in the position to

commit the Government as Contracting Officer, meets the selection criteria of the Federal Acquisition Regulation and HUDAR. If a temporary waiver (see 2401.603-2) is to be granted concerning the training requirements, the written statement should include the waiver and the statement that the training requirements must be met within 24 months. This statement shall be made part of the official personnel file of the Contracting Officer or the individual so selected or designated. The designation and statement shall be based on the size and complexity of contracts the individual will be required to execute and administer, and also shall consider any limitations on the scope of the authority to be exercised.

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.

2402.000 Scope of part.

Subpart 2402.1 Definitions

2402.101 Definitions.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR Part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

Subpart 2402.1—Definitions

2402.10 Definitions.

"Department" means the Department of Housing and Urban Development, which may also be designated as "HUD."

"Secretary" means the Secretary of Housing and Urban Development, or designee.

"Head of Contracting Activity (HCA)" as used in the HUDAR has the meaning ascribed to it in the FAR. The following HUD officials are designated HCA's:

(a) *Director, Office of Procurement and Contracts* for HUD headquarters procurement and the Consolidated Supply Program;

(b) *The Regional Directors, Offices of Administration* for regional office procurement;

(c) *The Chief, Reconditioning and Contracting Branch* for national contracts on acquired properties;

(d) *The Manager, HUD Field Offices* for decentralized procurement on acquired properties; and

(e) *The President, Government National Mortgage Association* for procurements related to GNMA's programmatic functions.

"Primary Organization Heads" are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Under Secretary. The Primary Organization Heads of HUD are: Assistant Secretary(ies), the General Counsel, the Deputy Under Secretary(ies), President of GNMA, Inspector General and Regional Administrator(s).

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

2403.204 Treatment of violations.

Subpart 2403.3—Reports of Identical Bids and Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.408 Evaluation of the SF 119.

2403.408-1 Responsibilities.

2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 24 CFR Part 0.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203-3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred.

The HCA will refer violations and recommended corrective actions to the Procurement Executive for disposition.

2403.204 Treatment of violations.

The Procurement Executive will process violations in accordance with FAR 3.204.

Subpart 2403.3—Reports of Identical Bids and Suspected Antitrust Violations

2403.303-70 Reporting requirements.

Potential anti-competitive practices such as described in FAR Subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

Subpart 2403.4—Contingent Fees

2403.408-1 Responsibilities.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be submitted for the review and approval of the Head of the Contracting Activity and the Office of General Counsel.

2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the Head of the Contracting Activity shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the government's right to void the contract or to recover the fee.

(3) Initiate suspension or debarment action.

(4) Refer suspected fraudulent or criminal matters to the Office of Inspector General for possible referral to the Department of Justice.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

(b) Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of Inspector General consistent with the procedures for reporting any violation of law contained in HUD Handbook 2000.3, REV. 2, Office of Inspector General Activities (1983).

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

The Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR Subpart 3.6. In addition, the Contracting Officer shall comply with FAR Subpart 9.5 before awarding any such contract.

PART 2404—ADMINISTRATIVE MATTERS

Subpart 2404.8—Contract Files

2404.805-1 Disposal of contract files.

Unsuccessful bids and proposals shall be disposed of as follows:

(a) *By the contracting activity.* Unsuccessful cost and technical proposals shall be retained in the procuring activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the procurement office shall ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless (1) a debriefing has been requested but not held or (2) a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2405—PUBLICIZING CONTRACT ACTIONS**Subpart 2405.5—Paid Advertisements****2405.502 Authority.**

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Redesignations of Authority, subject to the availability of funds.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

SUBCHAPTER B—ACQUISITION PLANNING**PART 2407—ACQUISITION PLANNING****Subpart 2407.1—Acquisition Plans****2407.102 Policy.**

The Procurement Executive is responsible for establishing and maintaining internal procedures to implement the Department's Advance Procurement Planning System (APPS). The APPS should generally meet the criteria contained in FAR Subpart 7.1.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2409—CONTRACTOR QUALIFICATIONS**Subpart 2409.5—Organizational Conflicts of Interest**

Sec.

2409.500 Scope of subpart.

2409.501 Definition.

2409.502 Applicability.

2409.504 Contracting Officer responsibilities.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2409.5—Organizational Conflicts of Interest**2409.500 Scope of subpart.**

This subpart prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest.

2409.501 Definition.

"Organizational conflict of interest" is a situation in which the nature of work under a proposed Government contract and a prospective contractor's organizational financial, contractual, or other interests are such that (a) award of the contract may result in an unfair competitive advantage to the contractor

or (b) impair the contractor's objectivity in performing the contract work.

2409.502 Applicability.

The procedures described in this section shall be used for all consulting services contracts and for any other procurement involving the acquisition of services when the Contracting Officer determines that the nature of the procurement presents a potential for an organizational conflict of interest.

2409.504 Contracting officer responsibilities.

The following actions are required whenever it is determined that this section is applicable:

(a) *Disclosure or Representation.* (1) Each solicitation shall contain a provision which requires a potential offeror to provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under this section and bearing on whether the offeror and any proposed subcontractor or consultant has a possible organizational conflict of interest with respect to:

(i) Being able to render impartial, technically sound, and objective assistance or advice; or
(ii) Being given an unfair competitive advantage.

The offeror also may provide relevant facts that show how its organizational structure or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organizations and how that structure or system would eliminate or neutralize such organizational conflict.

(2) In the absence of any interest referred to above, the offeror shall submit a statement certifying that to the best of its knowledge and belief no such interest exists.

(3) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information and any other relevant information known to the Contracting Officer will be used to determine whether an award to the offeror may create any organizational conflict of interest. If such organizational conflict of interest is found to exist, the Contracting Officer may:

(i) Impose appropriate conditions which eliminate or neutralize such conflict;

(ii) Disqualify the offeror; or,

(iii) Determine that it is otherwise in the best interests of the United States to

contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(4) Failure to provide the disclosure or execute the representation will be deemed to be a minor infraction and the offeror or contractor will be permitted to correct the omission within a time frame established by the Contracting Officer.

(5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post award disclosure requirements contained in the clause required by paragraph (b) of this section.

(b) *Contract clause.* All contract actions subject to the above disclosure or representation requirements shall include the following clause:

Organizational Conflicts of Interest

(1) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed Government contract and a prospective contractor's organizational, financial, contractual or other interests are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The contractor's objectivity in performing the contract work may be impaired; or

(iii) That the contractor has disclosed all relevant information and requested the Contracting Officer to make a determination with respect to this contract.

(2) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the contractor has taken or intends to take to eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interests of the Government.

(3) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

Subcontracts

(4) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the Government and shall include any necessary provisions to

eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this contract.

(c) *Administrative requirements.* (1) The disclosure or representation required above is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect his or her participation in subsequent procurements arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to eliminate or neutralize such conflict will be included in any resultant contract. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent procurements. A fixed term of reasonable duration is measured by the time required to eliminate what otherwise would constitute an unfair competitive advantage. This is a variable. However, in no event shall an exclusion be stated which is not related to a specific expiration date or a certain event. The Government shall not determine without notice on an after-the-fact basis that performance of a contract created an organizational conflict of interest with respect to procurements arising out of or related to work performed under that contract.

(2) Whenever an organizational conflict of interest is found to exist, it shall be adequately eliminated, or neutralized through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited, to the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the Contractor.

(ii) Software exclusion clauses which:

(A) Require the contractor, members of his or her Board of Directors, or his or her chief executives to eliminate, or neutralize an organizational conflict of interest:

(B) Provide for the protection of the confidentiality of data and guard against its unauthorized use; or

(C) Prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work.

(iii) The prospective contractor shall be given the opportunity to negotiate the terms and conditions of the clause and its application. The extent and time period of any restrictions shall be specified in the clause.

(d) *Contract award when an organizational conflict of interest is present.* (1) No contract or modification award shall be made to an offeror or contractor having an organizational conflict of interest with respect to that contract or modifications unless:

(i) The conflict has been eliminated or neutralized; or

(ii) The Contracting Officer determines that the award of the contract would be otherwise in the best interests of the Government. Where such a determination is made, an appropriate written finding and determination shall be placed in the contract file.

(2) Examples of circumstances justifying such a determination include but are not necessarily limited to:

(i) Situations where the public exigency will not otherwise permit; or

(ii) Situations where the requirement cannot otherwise be obtained.

(3) The Contracting Officer's determination shall be approved by the Head of the Contracting Activity before award.

(e) *Action in Lieu of Termination.* If the Contracting Officer determines that it would not be in the best interests of the Government to terminate a contract as provided in the clause cited in paragraph (b) of this section, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

Departmental policies and procedures concerning debarment and suspension are contained in 24 CFR Part 24.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2413.4—Imprest Fund

2413.403 Agency responsibilities.

(d) If imprest funds are to be used, the procedures established by HUD Handbook 1925.2, Establishment and Operation of Imprest Funds (April, 1981) will be followed.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2414—FORMAL ADVERTISING

Subpart 2414.4—Opening of Bids and Award of Contracts

Sec.

2414.406 Mistakes in bid.

2414.406-3 Other mistakes disclosed before award.

2414.406-4 Mistakes after award.

2414.407 Award.

2414.407-2 Reasonable bidder—reasonableness of price.

2414.407-8 Protest against award.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.406 Mistakes in bids.

2414.406-3 Other mistakes disclosed before award.

Mistakes in bids discovered before award (other than obvious clerical errors) shall be submitted to the following authorities for determinations in accordance with FAR 14.406-3:

(a) *Director, Office of Procurement and Contracts* for all Departmental procurement, except as set forth in paragraph (b) of this section.

(b) *Field Office Managers for the Acquired Property Program.* The Field Office Manager will obtain the concurrence of the Office of General Counsel in Headquarters or Regional Counsel in the field before notification to the bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

2414.406-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed in accordance with FAR 14.406-4. For each determination, the Field Office Manager will obtain the concurrence of the Office of General Counsel (Headquarters) or Regional Counsel (field) before notification to the

bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

2414.407-701 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that: (a) The specifications were clear and not unduly restrictive; (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted; (c) the price is reasonable; and (b) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

2414.407-8 Protest against award.

(a) The following identifies the responsible agents and sets forth procedural requirements for handling protests, except for protests against awards under acquired property contracts, which shall be processed in accordance with 24 CFR Part 20. For the purpose of definition, as used in this section "working days" means the working days of the Agencies of the Federal Government, excluding Saturdays, Sundays and Federal holidays, as specified in 5 U.S.C. 6103.

(b) *Protest before award—(1) Resolution by contracting officer.* Interested parties are urged to seek resolution of their complaints initially with the contracting activity. The Contracting Officer shall act on any protest filed with the contracting activity (see FAR 14.407-8(a)) unless it is known that a protest has been filed concurrently with the General Accounting Office (GAO). Where a written protest is filed directly with the contracting activity, full consideration shall be given to the protest with the protester notified in writing of the final decision on the protest within thirty working days from the date of receipt by the Department. Where GAO views are required, the time for rendering a decision shall be ten working days from receipt of GAO views. Where the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 14.407-8(b)(4), the Head of the Contracting Activity shall approve such a determination before award. The appropriate official mentioned above shall notify the Office of General Counsel of the intent to make an award and the Office of General Counsel shall notify the GAO of such proposed action. Parties interested in protesting directly to GAO shall do so in accordance with

the General Accounting Office regulations at 4 CFR Part 21.

(2) *Responsibility.* The Office of General Counsel has the responsibility for handling matters relating to protests against award of contracts within the Department and for liaison with the GAO. All communications concerning a protest written or otherwise directed to GAO shall be coordinated with the Office of General Counsel. All written communications from the Department to GAO shall be by the Office of General Counsel. The Contracting Officer has the responsibility for furnishing the Office of General Counsel with all information relating to the protest.

(3) *Times for filing.* The times for filing are as follows:

(i) Protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for the receipt of proposals shall be filed before that date. In other cases a protest shall be filed to be received by the Department or GAO not later than five working days after the basis for protest is known or should have been known, whichever is earlier. Where such protest has been filed initially with HUD's contracting activity any subsequent protest to the GAO must be delivered to the GAO within five working days after notification of adverse action by HUD's procuring activity. GAO will consider the protest only if the initial protest was filed on a timely basis with the contracting activity.

(ii) Any additional statements by the protester in support of the protest to the GAO shall be mailed or otherwise furnished to the GAO, and one (1) copy sent to the contracting activity, no later than five working days after filing of the initial protest or receipt of notification from the GAO of the need for an additional statement.

(4) *Notice of protest and submission of report.* (i) When advised by GAO of the receipt of protest, the Office of General Counsel will inform the contracting activity immediately. The Contracting Officer shall promptly notify in writing the Contractor or all bidders or offerors who, in the opinion of the Contracting Officer, appear to have a reasonable prospect of receiving an award if the protest is denied. Upon receipt by the Department of a written request for a formal report from the GAO relating to a protest, the Office of General Counsel shall prepare and file such report in accordance with GAO requirements at 4 CFR Part 21.

(c) *Protest after award.* Protests initially received after contract award

are subject to the procedure in paragraph (b) of this section.

PART 2415—CONTRACTING BY NEGOTIATION

Subpart 2415.1—General Requirements for Negotiation

Sec.

2415.105 Competition.

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

2415.408 Issuing solicitations.

2415.413 Disclosure and use of information before award.

2415.413-1 Alternate 1.

Subpart 2415.5—Unsolicited Proposals.

2415.505 Content of unsolicited proposals.

2415.505-70 Unsolicited research proposals.

Subpart 2415.5—Source Selection

2415.605 Evaluation factors.

2415.612 Formal source selection.

2415.670 Informal source selection procedures.

Subpart 2415.10—Pre-Award and Post-Award Notifications, Protests and Mistakes

2415.1003 Protests against award.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2415.1—General Requirements for Negotiation

2415.105 Competition.

(d) The Procurement executive shall provide for the operation of a Procurement Review Board (PRB) to review all Headquarters proposed noncompetitive and consulting service awards in excess of the applicable small purchase limitation. The PRB shall be comprised of senior Departmental managers and shall use criteria consistent with those in the FAR in evaluating proposed awards.

(e) Regional Administrators/Regional Housing Commissioners shall provide for the operation of Regional Procurement Review Boards based upon directions received from the Procurement Executive.

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

2415.408 Issuing solicitations.

(d) The FAR policy on bidding time for formally advertised procurements (FAR 14.202-1) is applicable to negotiated procurements under this part.

2415.413 Disclosure and use of information before award.

2415.413-1 Alternate 1.

The Department shall employ the procedures in FAR Alternate 1 regarding disclosure and use of information.

Subpart 2415.5—Unsolicited Proposals.

2415.505 Content of unsolicited proposals.

2415.505-70 Unsolicited research proposals.

FAR Subpart 15.5 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

2415.506 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR Subpart 15.5.

(b) Unless otherwise specified in a Federal Register announcement unsolicited proposals should be submitted to the following contact points:

- (1) *For research*—Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Office of Management and Program Control, 451 7th Street SW., Washington, D.C. 20410.
- (2) *For all others*—Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 7th Street SW., Washington, D.C. 20410.

Subpart 2415.6—Source Selection

2415.605 Evaluation factors.

(e) The Request for Proposal (RFP) shall state clearly the evaluation factors that will be considered in making the source selection and their relative importance. Each technical factor and subfactor shall be assigned a numerical weight which shall appear in the RFP. These factors will serve as the standard against which all proposals will be evaluated.

2415.612 Formal source selection.

On those procurements where the expected dollar amount will exceed \$500,000, the following will apply:

(a) Selection of the source or sources for final contract negotiations shall be made by the Contracting Officer, consistent with his or her responsibilities under FAR 1.602. The selection shall be based upon the findings and recommendations of the Source Selection Official (SSO) who is the head of the funding office or his/her designee. To assist the SSO in evaluating proposals and making recommendations for selection, the SSO shall designate a Source Evaluation Board (SEB) composed of a chairperson, voting members, and advisors.

(b) After the deadline for receipt of offers, the Contracting Officer will forward five copies of the technical portion of each proposal to the SEB chairman or his or her designee, who shall be responsible for custody of the offers throughout the evaluation process. The business portions of each proposal will be retained by the Contracting Officer pending initial technical evaluation by the SEB.

(c) The SEB will evaluate each proposal in strict conformance with the factors for award of the RFP, and will assign each proposal a score on the basis of the factors for award. The SEB shall identify each proposal as being either acceptable or unacceptable. A proposal should be considered unacceptable if its deficiencies cannot be corrected through written and oral discussions to the point of having a reasonable chance of being selected for award. Predetermined cutoff scores designed for determining the threshold level of acceptability of proposals shall not be employed.

(d) After the initial technical evaluation, the Contracting Officer and the SEB will evaluate the business portion of each proposal.

(e) Unless the SEB is prepared to recommend under FAR 15.610(a)(6) that the award be made on the basis of the most favorable initial proposal, the SEB shall establish a competitive range based upon the evaluation of all the factors for award including cost or price. The SEB determination is subject to the review and approval of the Contracting Officer.

(f) The SEB shall conduct written or oral discussions with all proposers within the competitive range as outlined in 2415.670-1(e).

(g) After the close of discussions, receipt of any revisions to proposals and any final adjustments to proposal scores, the SEB shall prepare a written report of its findings and recommendations and submit it to the SSO for action. The report shall summarize all significant SEB actions in

the solicitation and evaluation phases and include:

(1) *Statement of findings.* Each acceptable proposal shall be discussed in descending order of scores/rankings. The statement shall identify the strengths and weaknesses of each proposal and any appropriate information for the consideration of the SSO.

(2) *Recommendations.* The SEB shall provide recommendations to the SSO as to selection in terms of: (i) A single source; (ii) A number of equal sources; (iii) A number of sources in descending order; or (iv) options to be considered in arriving at the final decision. In making its recommendation, the SEB shall consider the requirements set forth in 2415.670(h).

(h) Based upon the SEB report and his or her review of the matter, the SSO will recommend a source or sources and document the basis for his or her recommendation. The SSO will communicate these findings and recommendation in a memorandum to the Contracting Officer. The memorandum will request the Contracting Officer to negotiate with the recommended source(s), and may include specific instructions and an alternate source or sources in the event the conduct of final negotiations so warrants.

(i) After receipt of the SSO's recommendation, the Contracting Officer will select a source, based upon the findings and recommendation of the SSO for final negotiations in accordance with 2415.670(i). A proposal shall not be considered accepted or contract awarded until final negotiations are completed with the source and a contract is executed.

2415.670 Informal source selection.

On procurements where the expected dollar amount will not exceed \$500,000 the Department will use the following procedures:

(a) *Forwarding proposals.* After the deadline for receipt of offers, the Contracting Officer will forward five copies of the technical portion of each proposal to the Technical Evaluation Panel (TEP) for evaluation. The TEP will be composed of one or more technical personnel designated by the program or initiating office prior to issuance of the solicitation. The business portions of each proposal will be retained by the Contracting Officer for subsequent evaluation.

(b) *Evaluation.* The TEP will evaluate each proposal in strict conformity with the factors for award set forth in the RFP, and will assign each a score on the

basis of the factors for award. The TEP shall identify each proposal as being either acceptable or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions.

Predetermined cutoff scores designed for determining the threshold level of acceptability of proposals shall not be employed.

(c) *Report.* A TEP report shall be prepared and signed by the technical evaluator(s), furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file. The report shall reflect the scoring of each proposal and the rankings of the proposals, and shall identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that may bear upon the selection of sources for negotiation and award. Specific technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. Score sheets of all panel members shall be appended to the report.

(d) *Review of report.* After submission of the TEP report, the Contracting Officer and the TEP will evaluate the business portion of each proposal.

(e) *Competitive range.* Unless it is determined under FAR 15.610(a)(6) that award shall be made on the basis of the most favorable initial proposal, the Contracting Officer will determine which offers are within the competitive range. A determination of the limits of the competitive range requires a comparison of the evaluation of each proposal against the evaluation of other proposals and therefore cannot be predetermined on the basis of a given number of or percentage of proposals. The competitive range shall include all proposals which have a reasonable chance of being selected for award.

(f) *Conduct of discussions.* The Contracting Officer (or his or her designee) and the Technical Evaluation Panel will conduct written or oral discussions of the work to be performed, the cost/price of the work, and other relevant points, with all those offerors within the competitive range. Discussions are not required if the conditions of FAR 15.610(a)(6) are applicable. The Contracting Officer shall point out to each offeror the ambiguities, uncertainties, and deficiencies, if any, in his or her proposal which can be corrected without major changes to the proposal. He or she shall give each offeror a reasonable opportunity (with a

common cutoff date for all) to support, clarify, correct, improve, or revise his or her proposal. Discussions with an offeror should disclose deficiencies in the proposal but should not identify approaches or ideas through which another offeror has achieved a higher evaluation. No information will be revealed by the Government which could give one offeror an unfair competitive advantage over another. Cost estimates made by the Government will not be disclosed.

(g) *Extent of discussions.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may require more than one round of discussions with proposers within the competitive range depending upon the time constraints, the expense, administrative limitations, and the overall significance of the procurement.

(h) *Selection of contractor.* (1) After the close of discussions and receipt of any revisions to proposals, the TEP shall perform a final evaluation and prepare its selection recommendation(s). The TEP shall then forward the recommendation(s) through the appropriate officials having a need to know, as designated by the funding Assistant Secretary, to the Contracting Officer who shall select for final contract negotiation the offeror whose proposal promises the greatest value to the Government in terms of cost or price, technical and other relevant factors.

(2) Cost and price shall be considered in the selection of a contractor. This is particularly true where more than one acceptable offer from technically qualified sources remains for consideration after conduct of negotiations. If a lower priced, lower scored offer meets the Government's needs, acceptance of a higher priced, higher scored offer shall be supported by a specific determination by the Contracting Officer that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror. Offers exceeding the Government's needs are not a basis for technical superiority.

(i) *Final negotiation and award.* Under a negotiated procurement, selection of the source or sources marks only the first phase of finalizing the award. Steps remaining include: (1) Reaching agreement with the selected source on the costing/pricing, technical, and other provisions that will condition his/her performance under the contract; (2) setting forth these terms in a mutually acceptable contractual document; and

(3) having and documenting a sound, rational basis for the results negotiated. After negotiation is completed, the Contracting Officer will effect appropriate coordination, prepare a negotiation memorandum and execute the contract.

Subpart 2415.10—Pre-award and Post-award Notifications, Protests and Mistakes

2415.1003 Protests against award.

Protests against awards of negotiated procurement shall be processed in accordance with 2414.407-8.

PART 2416—TYPES OF CONTRACTS

Sec.

Subpart 2416.3—Cost-Reimbursement Contracts

2416.301 General.

2416.301-3 Limitations.

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2416.3—Cost-Reimbursement Contracts

2416.301 General.

2416.301-3 Limitations.

(c) The Head of the Contracting Activity, or designee, may approve the determinations and findings required by FAR 16.301-3(c).

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.

(e)(1) Award fee contracts should include in the contract schedule the Articles shown below. The Articles may be modified to meet individual situations and any Article of specific requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Policy and Evaluation Division, Office of Procurement and Contracts, is encouraged.

ARTICLE (Insert Article Number)—

Estimated Cost, Base Fee, and Award Fee

The estimated cost of this contract is \$ (Insert Amount). A base fee of \$ (Insert Amount) is payable in accordance with the ARTICLE entitled "Payment of Base and Award Fee." In addition, a maximum Award Fee of \$ (Insert Amount) is available for

payment in accordance with the ARTICLE entitled "Payment of Base and Award Fee."

ARTICLE (Insert Article Number)—

Payment of Base and Award Fee

Base Fee. The government will make payment of the base fee in (Insert Number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

Award Fee. The government will promptly make payment of any Award Fee upon the submission, by the contractor to the Contracting Officer or his/her authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

ARTICLE (Insert Article Number)—

Determination of Award Fee Earned

A. The government shall at the conclusion of each specified evaluation period(s) evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the government Fee Determination Official (FDO) designated in the contract and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any other appeal clause.

B. It is agreed that the evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the ARTICLE entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, any self-evaluation which is received within (Insert Number) days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.

C. The FDO may, in his or her sole discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation and/or "Distribution of Award Fee" shall be adjusted to reflect such allocations.

ARTICLE (Insert Article Number)—

Performance Evaluation Plan

A. A contractor Performance Evaluation Plan upon which the determination of award fee shall be based, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area, will be unilaterally established by the government. A copy of the plan shall be provided to the contractor (Insert Number) calendar days prior to the start of the first evaluation period.

B. The Performance Evaluation Plan shall set forth the criteria upon which the contractor will be evaluated for performance

relating to any (1) Technical Functions, including Schedule requirements if appropriate, (2) Management Functions, and (3) Cost Functions selected for evaluation.

C. The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor (Insert Number) calendar days prior to the start of the evaluation period to which the change will apply.

ARTICLE (Insert Article Number)—

Distribution of Award Fee

A. The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period
Available Award Fee

B. In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

The general provisions required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(i) The words "base fee and award fee" should be substituted for the term "fixed-fee" where it appears in the clause at FAR 52.243-2. Changes.

(ii) The word "base fee" should be substituted for the word "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(iii) The words "base fee, if any, and such additional fee as may be awarded as provided for in the schedule" should be substituted for the term "fee" wherever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603-2 Application.

(c) In accordance with FAR 16.603-2(c), a letter contract shall be made definite within 180 days of the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless different terms are approved in advance by the Head of the Contracting Activity.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2419.2—Policies

Sec.

2419.201 General policy.

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

Subpart 2419.9—Contracting Opportunities for Women-Owned Small Business

2419.901 Policy.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2419.2—Policies

2419.201 General policy.

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

(d) Each Regional Administrator shall designate a Senior Small Business Specialist, who shall coordinate and monitor the activities of the small business/small disadvantaged business specialists designated by each Head of a Contracting Activity, as provided in paragraph (e) of this section.

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

(1) Maintain a program designed to locate capable small/small disadvantaged business sources for current and future procurements;

(2) Coordinate inquiries and requests for advice from small/small disadvantaged business concerns on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that small/small disadvantaged business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain small/small disadvantaged business participation in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from small/small disadvantaged business concerns;

(6) Advise small/small disadvantaged business concerns with respect to the financial assistance available under existing laws and regulations and assist

such concerns in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning small/small disadvantaged business participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

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

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

(a) *Class set-aside for construction.* A class set-aside is hereby made for each proposed procurement for construction with an estimated cost of less than \$1,000,000. Accordingly, Contracting Officers shall set aside for small business each such proposed procurement. If a Contracting Officer determines that any individual procurement falling within the class set-aside requirements of this Section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn with the concurrence of the Head of the Contracting Activity. Proposed procurements for construction which exceed an estimate of \$500,000 shall be considered for set-aside on a case-by-case basis.

Subpart 2419.9—Contracting Opportunities for Woman-Owned Small Businesses

2419.901 Policy.

Executive Order 12138, May 18, 1979 (44 FR 29637, 3 CFR, 1979 Comp., P. 890) directs agencies to take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. The Office of Small and Disadvantaged Business Utilization is responsible for establishing Department-wide goals for awards to women-owned businesses and monitoring and reporting progress against those goals.

PART 2420—LABOR SURPLUS AREA CONCERNS

Subpart 2420.1—General

2420.102 General policy.

It is the policy of the Department to award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place

subcontracts with LSA concerns. Policies and procedures with regard to the LSA program are set forth in FAR Part 20. The Office of Small and Disadvantaged Business Utilization is responsible for establishing Department-wide goals for the LSA program and monitoring and reporting progress against those goals.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2421—MINORITY BUSINESS ENTERPRISES AND HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

Sec.

Subpart 2421.1—Minority Business Enterprises

2421.101 Policy.

2421.102 Responsibilities.

2421.103 Certification of status as a minority business enterprise.

Subpart 2421.2—Historically Black Colleges and Universities

2421.201 Policy.

Authority Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2421.1—Minority Business Enterprises

2421.101 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans.

2421.102 Responsibilities.

(a) *The Assistant Secretary for Fair Housing and Equal Opportunity.* The Assistant Secretary for Fair Housing

and Equal Opportunity develops Departmental plans and policies for MBE functions in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and to other Assistant Secretaries on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals of other Assistant Secretaries,

monitors and evaluates the Department's MBE functions, and reports on the MBE program to Primary Organization Heads and to the Department of Commerce.

(b) *Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).* The Director of the Office of Small and Disadvantaged Business Utilization performs a staff role for the Secretary with respect to MBE functions.

2421.103 Certification of status as a minority business enterprise.

All contracting activities shall request all interested Contractors, bidders, or offerors (including sources utilized through small purchase procedures) to complete, on a voluntary basis, a certification as to whether they are a minority business enterprise as defined under 2421.101. Completion of this certification is not a condition of eligibility for contract award.

RFQ/IFB/FRP No. _____

Purchase Order/Contract No. _____

U.S. Department of Housing and Urban Development additional certification of status as a Minority Business Enterprise.

Offerors, bidders or suppliers are requested to complete, sign and attach this page, in single copy, to any bid, proposal or quote submitted under the Solicitation identified above. Completion of the certification is not a condition of eligibility for contract award.

The Bidder/Offeror/Supplier certifies that he ☐ is, ☐ is not, (check one) a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans.

(Name and title of person signing.) _____

Signature _____

Date _____

Subpart 2421.2—Historically Black Colleges and Universities

2421.201 Policy.

Executive Order 12320, September 15, 1981 (46 FR 46107), 3 CFR, 1981 Comp., P. 176, directed the Department to establish annual plans to increase the ability of Historically Black Colleges and Universities to participate in Federally sponsored programs including contracts, grants and cooperative agreements. OSDBU is responsible for developing the annual plans regarding the participation of Historically Black Colleges and Universities in Departmental programs. OSDBU is responsible also for ensuring that the reporting requirements are fulfilled.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

Subpart 2424.1—Protection of Individual Privacy Procedures

2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR Part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.

See 24 CFR Part 15 for the HUD regulations which implement the Freedom of Information Act.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2429—TAXES

Subpart 2429.1—General

2429.101 Resolving of tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request in writing the Office of General Counsel's assistance. The request shall detail the problem and be accompanied by appropriate backup data. The Office of General Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. The Office of General Counsel shall have the responsibility for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

PART 2432—CONTRACT FINANCING

Subpart 2432.4—Advance Payments

2432.410 Findings, determination and authorization.

(c) The Determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the Head of the Contracting Activity only in those instances where specific delegation of authority has been issued in writing giving the HCA such authority to approve advances.

Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

2436.602-4 Selection authority.

2436.602-5 Short selection processes for contracts not to exceed \$10,000.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc, shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed Chairperson. Three (3) alternate members who are Federal employees shall also be appointed, but at any given time the majority of voting members shall be from the program area concerned. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) *Field Office Manager* for boards appointed at the Field Office level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall become familiar with those provisions of 24 CFR, Subtitle A, Part O, Housing and Housing Credit regulations regarding conflicts of interest. If at any time during the selection process a board member encounters a situation

with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the Chairperson for resolution and proper action. The Chairperson will refer the matter to the Office of General Counsel.

(d) *Confidentiality.* The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

2436.602-4 Selection Authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate Field Office Manager (Field).

2436.602-5 Short selection processes for contracts not to exceed \$10,000.

The short selection process described in FAR 36.602-5(a) is authorized for used for contracts not expected to exceed \$10,000.

PART 2437—SERVICE CONTRACTING

Subpart 2437.2—Consulting Services

2437.204 Policy

All proposed consulting service awards in excess of the applicable small purchase limitation are subject to the review and approval of the Headquarters and Field Procurement Review Boards mandated by 2415.105.

Subchapter G—Contract Management

(Sec. (d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

PART 2449—TERMINATION OF CONTRACTS

Subpart 2449.1—General Principles

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to ensure the independent review of proposed termination settlements in excess of \$100,000.

(Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: February 24, 1984.

Donald J. Keuch Jr.,

Deputy Assistant Secretary for
Administration.

[FR Doc. 84-5503 Filed 2-29-84; 8:45 am]

BILLING CODE 4210-01-M