

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Administration**

**48 CFR Parts 2401, 2402, 2404, 2405,
2406, 2413, 2415, 2416, 2419, 2426,
2428, 2429, 2432, 2436, 2437, 2452 and
2453**

[Docket No. FR-3887-I-01]

RIN 2535-AA23

**HUD Acquisition Regulation; Field
Reorganization, Streamlining, and
Simplification**

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

ACTION: Interim rule and request for
comments.

SUMMARY: This interim rule makes
changes to the HUD Acquisition
Regulation (HUDAR) required to
implement: the Department's Field
reorganization, particularly the
establishment of the Administrative
Service Centers; the Federal Acquisition
Streamlining Act of 1994 (FASA); and
Departmental efforts to streamline and
simplify the procurement process.

DATES: Effective Date: October 5, 1995.

Comment due date: Comments on this
interim rule must be submitted on or
before November 6, 1995.

ADDRESSES: Send written comments to
Rules Docket Clerk, Room 10276, U.S.
Department of Housing and Urban
Development, 451 Seventh St., SW,
Washington, DC 20410.

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

SUPPLEMENTARY INFORMATION:

Background

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

The HUDAR (title 48, chapter 24 of
the Code of Federal Regulations) is
prescribed by the Assistant Secretary for
Administration under section 7(d) of the
Department of HUD Act (42 U.S.C.
3535(d)); section 205(c) of the Federal

Property and Administrative Services
Act of 1949 (40 U.S.C. 486(c)); the
Secretary's delegation effective October
9, 1985 (50 FR 42097); and the general
authorization in FAR 1.301.

The purpose of this interim rule is to
amend the HUDAR to update existing
coverage with respect to the
Department's structure and
organizational responsibilities; to
implement FASA (Pub. L. 103-355,
approved October 13, 1994); and to
streamline Departmental procurement
practices.

The heading of HUDAR subpart
2401.6 is revised to read "Career
Development, Contracting Authority,
and Responsibilities".

HUDAR 2401.601-73 is retitled
"Administrative Service Centers" and is
revised to reflect HUD's current field
structure and to eliminate content
which duplicates published delegations
of procurement authority.

HUDAR 2401.602-3 is revised to
conform to the structure of FAR 1.602-
3 and provide greater discretion to the
HCA in handling ratifications.

HUDAR 2402.101 is revised to add
definitions for the "accounting office",
and the "best value" and "lowest-priced
technically acceptable proposal"
approaches to source selection; to
correct the HCA designation for field
procurements; to provide a more generic
definition for "Legal Counsel"; to add
the "General Counsel" to the list of
"Primary Organization Heads"; and to
clarify the definition of "Source
Selection Official".

The heading of HUDAR Subpart
2404.8 is revised to read "Government
Contract Files".

HUDAR 2404.805-1 is renumbered
and retitled to conform to recent FAR
changes, and the content is revised to
grant the contracting officer greater
discretion in managing the disposition
of unsuccessful proposals.

HUDAR subpart 2405.3 and section
2405.301 are removed in their entirety.
HUD's practices in synopsisizing contract
awards will conform to the FAR.

HUDAR 2406.304-70 is revised to
establish an approval official (Director,
Office of Procurement and Contracts) for
field contracts at a level consistent with
that required by FAR 6.304.

HUDAR 2406.304-71 is removed in
its entirety. HUD's practices in
reviewing and approving justifications
for other than full and open competition
will conform to the FAR.

HUDAR 2406.501 is revised to state
that the Senior Procurement Executive
will designate the Department's
Competition Advocate by **Federal
Register** notice and to authorize each

HCA to appoint contracting activity-
level competition advocates.

HUDAR Part 2413 is retitled to
conform to the FAR.

HUDAR 2413.107 is redesignated as
2413.106-2 and retitled to conform to
the FAR. The regulation text is
unchanged.

HUDAR 2413.403 is redesignated as
2413.402 to conform to the FAR, and
revised to remove an obsolete directive
and add correct information regarding
the operation of imprest funds.

HUDAR 2413.404 is redesignated as
2413.403 to conform to the FAR and the
text is revised to avoid duplication of
imprest fund transaction limits stated in
the FAR.

HUDAR 2413.505-2 is redesignated as
2413.505-1(b) and retitled to conform to
the FAR. Its text is revised to authorize
the use of Form HUD-2542, Purchase
Order and Payment Authorization, for
any small purchase charged to the FHA
Fund, and to remove information that is
internal in nature.

HUDAR subpart 2413.6 and section
2413.601 are added to reference HUD's
internal directive governing use of the
Government-wide commercial credit
card to make micro-purchases.

HUDAR 2414.406-4 is revised to
clarify that the concurrence of counsel
should be obtained at headquarters or
the field, depending on the location of
the contracting activity.

HUDAR 2415.407 is revised to
separate the basic provision dealing
with proposal content from those cases
requiring cost and pricing data. When
the latter are required, new Alternate I
is prescribed for use. In addition,
contracting officers are granted the
latitude to adapt Alternate I or develop
additional text to deal with situations
when partial cost and pricing data may
be needed as provided in FAR 15.804-
6(a)(2).

HUDAR 2415.408 is removed because
adequate coverage on issuing
solicitations is contained in the FAR.

HUDAR 2415.411 and 2415.411-70
are removed in their entirety. The
prescribed use of the Form HUD-4056,
Abstract of Proposals, is an internal
agency matter.

HUDAR subpart 2415.6 contains
numerous revisions to simplify HUD's
source selection practices. While each
section change is explained in turn
below, the general thrust of these
revisions is to move to one procedure
for the evaluation of proposals, and to
clarify distinctions in procedures when
using the "lowest-priced technically
acceptable proposal" or "best value"
approach to source selection.

HUDAR 2415.604 is revised to
establish a single procedure for the

evaluation of proposals and to distinguish responsibility for the source selection decision under the two possible source selection approaches—"best value" or "lowest-priced technically acceptable proposal".

HUDAR 2415.605 is revised to require that each solicitation identify the source selection approach to be used in evaluating proposals, and to provide a distinction between the types of evaluation factors available for use.

HUDAR 2415.608 is revised to clarify procedural differences in the evaluation of proposals under the two possible source selection approaches, and to eliminate information adequately covered in the FAR.

HUDAR 2415.609 is removed. The content of this section was removed in an earlier HUDAR amendment; the section title was overlooked.

HUDAR 2415.611 is added to clarify requirements for documentation of the source selection decision.

HUDAR 2415.612 and 2415.612-70 are removed in their entirety. In order to streamline and expedite the procurement process, HUD will not use formal source selection procedures.

HUDAR 2415.613-70 is revised to clarify that the alternative procedures authorized by this section use the best value approach to source selection. That same section and 2415.613-72 are both revised to eliminate references to Source Evaluation Boards, a formal procedure that will no longer be used.

HUDAR Subpart 2416.3, Cost-Reimbursement Contracts, and sections 2416.301 and 2416.301-3 are removed in their entirety. Recent changes to the FAR to implement FASA eliminated the requirement for determinations and findings to support the selection of contract type.

HUDAR subpart 2426.1 is redesignated as subpart 2426.70 to conform to the FAR. Accordingly, HUDAR 2426.101, 2426.102, and 2426.103 are redesignated as 2426.701, 2426.702, and 2426.703 (the regulation text of the latter two sections is unchanged). HUDAR 2426.701 is revised to delete the list of ethnic groups designated as "Minority Business Enterprises", and instead rely on definitions established by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

HUDAR subpart 2426.2 and section 2426.201 are removed.

HUDAR Subpart 2428.2, Sureties, the heading of section 2428.204, and section 2428.204-70 are removed in their entirety. FAR 28.203-2 contains adequate information regarding the use of irrevocable letters of credit.

HUDAR 2429.101 is revised to conform the section title to the FAR and clarify that coordination with legal counsel may be at headquarters or in the field, depending on the location of the contracting activity.

HUDAR 2432.402, 2432.906 and 2432.908 are revised to correct references to HUD field components consistent with the Department's reorganization.

HUDAR 2436.602-2 and 2436.602-4 are revised to: authorize the appointment of non-voting advisors to architect-engineer evaluation boards; change appointment and selection authorities consistent with the Department's field reorganization; correct references to HUD's Standards of Conduct; and, clarify that referral of matters to legal counsel may occur at headquarters or in the field, as appropriate.

HUDAR 2437.205 is revised to remove the requirement for higher-level review of contracts for advisory and assistance services contracts consistent with recent changes to the FAR. In addition, the use of Form HUD-24003, GTR Performance Assessment (Final) is prescribed to document the utility of products or services delivered by the contractor, as required by FAR 37.205.

HUDAR 2452.215-70 is revised to separate the requirement for cost and pricing data from the basic provision concerning proposal content. A new Alternate I has been added to deal with situations when cost and pricing data are required, in conformance with recent FAR changes increasing the threshold for submission of cost and pricing data to \$500,000.

HUDAR 2452.219-70 is revised to eliminate repetition and clarify the content of Alternate I.

HUDAR 2452.226-70 is revised to make a conforming change in a reference from 2426.103 to 2426.703, and to delete "Hasidic Jewish Americans" from the ethnic groups listed as "Minority Business Enterprises". Their inclusion was based on an improper application of the Minority Business Development Agency's regulations at 15 CFR 1400.1 which defines groups eligible for MBDA assistance. Those regulations do not establish eligibility for other Federal or Federally-funded programs.

HUDAR 2452.232-70 and 2452.232-71 are revised to allow discretion in their application and to correct the reference to field components in Alternate I to both clauses.

HUDAR 2453.213-71 is removed because Form HUD-24001, Order for Supplies or Services, is no longer in use.

HUDAR 2453.213-72 is renumbered as 2453.213-71 and is revised to authorize the use of Form HUD-2542, Purchase Order and Payment Authorization, for any small purchase charged to the FHA Fund.

HUDAR 2453.237-70 is added to define the use of Form HUD-24002, GTR Performance Assessment (Final), to document contractor performance and the utility of products or services delivered.

Other Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. There are no new information collection requirements contained in these amendments to the HUDAR. The OMB Approval Number is 2535-0091.

Justification for Interim Rulemaking

The Department has determined that this rule should be adopted without the delay occasioned by requiring prior notice and comment because the majority of the changes either: implement FAR revisions already in effect that must be followed by HUD contracting personnel immediately; or, simply correct references to HUD organizational components consistent with the Department's field reorganization. Since this interim rule only makes conforming and clarifying changes to existing provisions, prior notice and comment are unnecessary under 24 CFR Part 10.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to the performance of accounting, auditing and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes amendments to the Department's acquisition regulations that: simplify HUD's procurement process, revise internal HUD component references, and implement FAR

revisions without adding additional requirements.

Executive Order 12612, Federalism

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

Executive Order 12606, The Family

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

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368,) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2413, 2415, 2416, 2419, 2426, 2428, 2429, 2432, 2436, 2437, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24 of the Code of Federal Regulations, is amended as follows:

PART 2401—FEDERAL ACQUISITION REGULATIONS SYSTEM

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

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

2. The heading of subpart 2401.6 is revised to read as follows:

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2401.601-73 is revised to read as follows:

2401.601-73 Administrative Service Centers.

Procurement of supplies and services for HUD field components is accomplished at the three Administrative Service Centers, each of which has a Contracting Division. The ASC Contracting Division Director may redelegate contracting authority to qualified personnel within their service area jurisdiction, consistent with the Department's published delegations of procurement authority and 2401.603.

4. Section 2401.602-3 is revised to read as follows:

2401.602-3 Ratification of unauthorized commitments.

(b)(1) *Policy.* A 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 and forwarded to the HCA or designee for approval.

(b)(3) The HCA may delegate authority to approve ratifications below the simplified acquisition threshold to:

- (i) Contracting division directors (Headquarters); or,
- (ii) Contracting branch chiefs (Field).

(c)(5) Legal concurrence may be requested if there is a legal issue involved, e.g. the propriety of the funding source, appropriateness of the expense, etc.

PART 2402—DEFINITIONS OF WORDS AND TERMS

5. The authority citation for part 2402 continues to read as follows:

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

6. In § 2402.101, the definitions of *Head of Contracting Activity*, *Primary Organization Heads*, and *Source Selection Official* are revised, and the definitions of *Accounting Office*, *Best Value*, *Legal Counsel*, and *Lowest-Priced Technically Acceptable Proposal* are added in alphabetical order, to read as follows:

2402.101 Definitions.

Accounting Office means the Office of Finance and Accounting in headquarters or the Field Accounting Divisions in the field.

Best Value is an approach to source selection that considers the appropriate

balance of technical merit, management capability, and cost/price factors in deciding which proposal offers the overall "best value" to the Government. A best value procurement permits the government to award a contract to an offeror with a higher price in order to obtain a better technical product or service with a lower risk that performance will be unsuccessful. The selection decision may be based on a determination of whether to tradeoff paying a higher price to obtain the added value of a particular proposal.

* * * * *

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

- (1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement;
- (2) The Directors, Administrative Service Center Contracting Divisions for field procurement;
- (3) The President, Government National Mortgage Association (GNMA), for procurement transactions that are conducted by GNMA in accordance with 2401.601-72(c).

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Lowest-Priced Technically Acceptable Proposal is an approach to source selection under which all evaluation factors, except price, are evaluated on a "Pass-Fail" basis. It is used when price will be the deciding factor once the technical acceptability of proposals has been determined.

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 Deputy Secretary. The Primary Organization Heads of HUD include: the Assistant Secretaries, the Inspector General, and the General Counsel.

* * * * *

Source Selection Official means the head of the office initiating and providing funding for the procurement, or his/her designee. This role may also be delegated to the contracting officer.

PART 2404—ADMINISTRATIVE MATTERS

7. The authority citation for part 2404 is revised to read as follows:

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

8. The heading of subpart 2404.8 is revised to read as follows:

Subpart 2404.8—Government Contract Files

9. Section 2404.805-1 is redesignated as 2404.805 and amended by revising the section heading and paragraph (a), to read as follows:

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or 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.

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PART 2405—PUBLICIZING CONTRACT ACTIONS

10. The authority citation for part 2405 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.3—[Removed]

11. and 12. Subpart 2405.3 *Synopses of Contract Awards* is removed.

PART 2406—COMPETITION REQUIREMENTS

13. The authority citation for part 2406 is revised to read as follows:

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

14. Section 2406.304-70 is revised to read as follows:

2406.304-70 Approval of the justification—field procurements.

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract more than \$1 million but not exceeding \$10 million, by the Director, Office of Procurement and Contracts.

2406.304-71 [Removed]

15. Section 2406.304-71 is removed.

16. Section 2406.501 is revised to read as follows:

2406.501 Requirement.

The Senior Procurement Executive shall designate the Department's competition advocate by **Federal Register** notice. Contracting activity-level competition advocates shall be appointed by each HCA.

PART 2413—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASING PROCEDURES

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

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

18. The heading of part 2413 is revised to read as follows:

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES**2413.107 [Redesignated as 2413.106-2]**

19. Section 2413.107 is redesignated as 2413.106-2 and revised to read as follows:

2413.106-2 Data to support purchases.

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

2413.403 [Redesignated as 2413.402]

20. Section 2413.403 is redesignated as 2413.402 and revised to read as follows:

2413.402 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

2413.404 [Redesignated as 2413.403]

21. Section 2413.404 is redesignated as 2413.403 and revised to read as follows:

2413.403 Conditions for use.

(a) Transaction limits above that established in FAR 13.403(a) may be approved by the Senior Procurement Executive.

2413.505-2 [Redesignated as 2413.505-1]

22. Section 2413.505-2 is redesignated as 2413.505-1 and revised to read as follows:

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

(b) For small purchases charged to the FHA Fund, contracting officers may use

Form HUD-2542, Purchase Order and Payment Authorization.

23. A new subpart 2413.6 and a new section 2413.601 are added to read as follows:

Subpart 2413.6—Micro-Purchase**2413.601 General.**

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

PART 2414—SEALED BIDDING

24. The authority citation for part 2414 is revised to read as follows:

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

25. Section 2414.406-4 is revised to read as follows:

2414.406-4 Mistakes after award.

(d) For determinations under FAR 14.406-4(b)(1) and (2), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

PART 2415—CONTRACTING BY NEGOTIATION

26. The authority citation for part 2415 is revised to read as follows:

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

27. In section 2415.407, new paragraphs (b) and (c) are added, to read as follows:

2415.407 Solicitation provisions.

* * * * *

(b) The contracting officer shall use the language at Alternate I to request cost and pricing data when it is anticipated that a contract or subcontract resulting from this solicitation will exceed \$500,000 in value. This language shall also be used for those instances when the contracting officer determines that full cost and pricing data are required pursuant to FAR 15.804-2(a)(3).

(c) In those instances when certified cost and pricing data are not required because an action is \$500,000 or less, the contracting officer may request partial or limited data in order to determine a reasonable price (see FAR 15.804-6(a)(2)). The contracting officer shall request only that data which is considered necessary to determine a reasonable price. If partial or limited data is required, the contracting officer may adapt the content of Alternate I to

suit the circumstances of the procurement, or develop additional text as required.

2415.408 [Removed]

28. Section 2415.408 is removed.

2415.411 [Removed]

29. Section 2415.411 is removed.

2415.411-70 [Removed]

30. Section 2415.411-70 is removed.

31. Section 2415.604 is revised to read as follows:

2415.604 Responsibilities.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five voting members, with one member serving as the chairperson. For more complex procurements, the TEP may add advisors and/or a committee structure to focus on specific technical issues or concerns. For inexpensive or routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use, and for making the source selection recommendation(s).

(c)(4) The selection of the source(s) for contract award shall be made by:

(i) The contracting officer for awards using the "lowest-priced technically-acceptable proposal" approach; or,

(ii) The Source Selection Official (SSO) for awards based on the "best value" approach.

32. Section 2415.605 is revised to read as follows:

2415.605 Evaluation factors.

(c) The solicitation shall state the basis for the source selection decision as either "lowest-priced technically-acceptable proposal" (LPTAP) or "best value" (see 2402.1, Definitions).

(e) When using the best value approach, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTAP, each evaluation factor is applied on a "pass-fail" basis; numerical scores are not assigned. "Pass-Fail" evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

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

2415.608 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal

to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(2) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the best value approach, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. However, under solicitations where mandatory requirements are established, those proposals that do not meet the mandatory requirements may be found unacceptable without further review.

(3) A technical evaluation report, which complies with FAR 15.608(a)(2), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

* * * * *

2415.609 [Removed]

34. Section 2415.609 is removed.

35. A new section 2415.611 is added to read as follows:

2415.611 Best and final offers.

(d) After receipt and evaluation of best and final offers, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

2415.612 [Removed]

36. Section 2415.612 is removed.

2415.612-70 [Removed]

37. Section 2415.612-70 is removed.

38. In section 2415.613, paragraph (a) is revised to read as follows:

2415.613 Alternative source selection procedures.

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor and the award decision will follow the best value approach.

* * * * *

39. Section 2415.613-70 is revised to read as follows:

2415.613-70 Technical evaluation.

The TEP shall perform the required technical evaluation of proposals received in accordance with 2415.608.

40. In section 2415.613-72, paragraph (a) is revised to read as follows:

2415.613-72 Selection and final negotiation.

(a) *Selection.* After the close of discussions and receipt of best and final offers, the TEP shall perform a final evaluation and prepare its selection recommendation for the SSO. Based on this evaluation, the SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

* * * * *

PART 2416—TYPES OF CONTRACTS

41. The authority citation for part 2416 is revised to read as follows:

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

Subpart 2416.3—[Removed]

42-44. Subpart 2416.3—*Cost-Reimbursement Contracts* is removed.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

45. The authority citation for part 2426 continues to read as follows:

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

Subpart 2426.1—[Redesignated as Subpart 2426.70]

46. The heading, subpart 2426.1—*Minority Business Enterprises*, is redesignated as subpart 2426.70.

2426.101 [Removed]

47. Section 2426.101 is removed.

2426.102 [Removed]

48. Section 2426.102 is removed.

2426.103 [Removed]

49. Section 2426.103 is removed.

Subpart 2426.2—[Removed]

50-51. Subpart 2426.2—*Historically Black Colleges and Universities* is removed.

52. A new section 2426.701 is added, to read as follows:

2426.701 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 the 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 those groups of U.S. citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

53. A new section 2426.702 is added, to read as follows:

2426.702 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies 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 Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

54. A new section 2426.703 is added, to read as follows:

2426.703 Solicitation provision.

Contracting officers shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226-70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

PART 2428—BONDS AND INSURANCE

55. The authority citation for part 2428 continues to read as follows:

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

Subpart 2428.2—[Removed]

56.-58. Subpart 2428.2—*Sureties* is removed.

PART 2429—TAXES

59. The authority citation for part 2429 is revised to read as follows:

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

60. Section 2429.101 is revised to read as follows:

2429.101 Resolving 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 assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. 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. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

PART 2432—CONTRACT FINANCING

61. The authority citation for part 2432 continues to read as follows:

Authority: 31 U.S.C. 3901-3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

62. Section 2432.402 is revised to read as follows:

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts for Headquarters contracts, or the cognizant Director, Administrative Services Center Contracting Division for field contracts.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

63. Section 2432.906 is revised to read as follows:

2432.906 Contract financing payments.

Except for construction contracts (see FAR 52.232-27), periods for payment shorter than 30 days shall not be specified in contracts without the prior approval of the cognizant accounting office to ensure that procedures are in place to allow timely payment.

64. Section 2432.908 is revised to read as follows:

2432.908 Contract clauses.

(a) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

(b) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232-71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

65. The authority citation for part 2436 is revised to read as follows:

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

66. In section 2436.602-2, paragraphs (a) introductory text, (a)(2), and (c) are revised, and paragraph (a)(3) is removed, to read as follows:

2436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), 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. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. 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) * * *

(2) The cognizant program office head within the State or Area Office for boards appointed at the field level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR Part 0, Standards of Conduct, 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 legal counsel.

* * * * *

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

2436.602-4 Selection authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate program office head at the cognizant State or Area Office (Field).

PART 2437—SERVICE CONTRACTING

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

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

69. Section 2437.205 is revised to read as follows:

2437.205 Management controls.

Documentation of the contractor's performance and the utility of products or services delivered shall be recorded on Form HUD-24002, GTR Performance Assessment (Final) by the responsible Government Technical Representative. This form may also be used to document contractor performance on other contracts.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

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

2452.215-70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all negotiated solicitations over the small purchase limitation:

PROPOSAL CONTENT AND OUTLINE (Insert Month, Year)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of a business proposal comprised of, cost and pricing data, (if required), and the offeror's representations and certifications. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the

evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) Proposals shall be submitted in [insert number] copies of each Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management

Section 1: Proposal Coverage. Cover the scope of work and general objectives which the proposal addresses.

Section 2: Tasks and Methods. Describe the principal tasks or sub-projects to be undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or sub-projects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: Organization and Staffing. Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the Key personnel.

Section 4: Prior and Current Experience. Include a list of projects currently in progress and/or completed within the last two years which are relevant to this procurement. Include names, addresses, and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: Conflicting or Multiple Use of Contractor Resources. Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

Section 6: Security Investigation. The offeror shall address in its technical proposal how it intends to manage the security of automated systems as required by HUDAR clause 2452.237-76. This includes developing security procedures, requesting background investigations for employees and subcontractors as required, and requesting investigations for replacements of such individuals as necessary due to turnover, rotation, or other reasons.

(d) Part II—Business Proposal

Section 1: Representations and Certifications. The Offeror's Representations and Certifications provided in Section K of this solicitation shall be included in this section.

(End of provision)

ALTERNATE I (Insert Month, Year)

This alternate shall be used as prescribed at 2415.407(b) when the submission of cost and pricing data are required. In such cases, add the following Section 2 to paragraph (d) of the basic provision:

Section 2: Cost and Pricing Data. The offeror shall furnish cost or pricing data using the SF-1411, Contract Pricing Proposal, provided in Section L of this solicitation, and the instructions attached to it, which are also printed at FAR 15.804-6. Round all amounts to the nearest dollar. Your data will be subject to review and evaluation by various Government personnel, and thus the estimates furnished on the SF-1411 should be supported by the required supplementary data so that the review and evaluation can be conducted with a minimum amount of delay and effort. In particular, ensure that the following essential elements are provided:

(i) A summary of total cost by cost element cross-referenced to each proposed contract line item (instruction number 1).

(ii) Identification of the basis for the kinds, quantities, and cost of all material elements proposed; and a consolidated priced summary of individual material quantities, or a consolidated priced bill of material (BOM), for the entire proposal. A well prepared BOM includes: part number/description, unit cost, quantity required, any nonrecurring costs, extended cost, and basis for the proposed price (quotation, prior buy, similar item, etc.) (instruction number 1, Materials).

(iii) For each subcontract over \$500,000 show: source, deliverable, quantity, price, type of subcontract, degree of competition, basis for selecting vendor and establishing reasonableness of price. When required, the subcontractor's cost or pricing data must be submitted with the offeror's initial proposal. If available and if required by FAR 15.806, the contractor should provide the results of review and evaluation of subcontract proposals. Though not required, the offeror should provide reasons for omitted data/reviews with dates when the data/reviews will be available (instruction number 1, Materials).

(iv) A Justification, submitted on an SF-1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when claiming an exemption from submitting cost or pricing data (instruction number 1, Materials).

(v) A time phased, e.g., quarterly, annual, breakdown of labor rates and hours by category or skill level, and the basis for the estimates of rates and hours, e.g., historical experiences, engineering estimates, learning curves, etc. If labor is the allocation base for indirect costs, summarize for each overhead pool and year (instruction number 1, Direct Labor).

(vi) In the absence of a forward pricing rate agreement or indirect rate proposal, the contractor should show how indirect rates were estimated and applied as a basis for evaluating the reasonableness of the proposed rates. Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data (instruction number 1, Indirect Costs).

(vii) Identification of all other costs by category and basis for pricing (instruction number 1, Other Costs).

(viii) When claiming cost of money, the contractor must submit Form CASB-CMF and show the calculation of the proposed amount (instruction number 1, Facilities Capital Cost of Money).

(ix) Identification of cost or pricing data, i.e., data that are verifiable and factual, and an explanation of the estimating process. When applicable, the following items should be specifically identified:

(A) Judgmental factors and the methods used in the estimate, including those used in projecting from known data; and

(B) The nature and amount of any contingencies (instruction number 2).

(x) An index referencing all cost or pricing data and information accompanying or identified in the proposal (instruction number 4).

(xi) For change order proposals: an estimate of the cost to complete deleted work not yet performed; identification of the actual or estimated cost of deleted work already performed; and an estimate of the cost of work added (instruction number 7B).

(End of provision)

72. In section 2452.219-70, the section heading and Alternate I are revised to read as follows (and footnote 8 is removed):

2452.219-70 Small Business and Small Disadvantaged Business Subcontracting Plan.

* * * * *

ALTERNATE I (DEC 1992)

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

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219-9, "Small Business and Small Disadvantaged Business Subcontracting Plan (Alternate I)." The offeror submitting the

apparent low bid, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination (FAR subpart 9.1). Failure to submit an adequate subcontracting plan where applicable shall make the offeror ineligible for the contract award.

(End of provision)

73. Section 2452.226-70 is revised to read as follows:

2452.226-70 Certification of status as a minority business enterprise.

As prescribed in 2426.703, insert the following provision in all solicitations:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE

(August 1995)

Bidder, Offeror or Supplier certifies that he or she _____ 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:

(Check the box applicable to you)

- Black Americans
- Hispanic Americans
- Native Americans
- Asian Pacific Americans
- Asian Indian Americans

74. In section 2452.232-70, Alternate I is revised to read as follows:

2452.232-70 Payment schedule and invoice submission (fixed-price).

* * * * *

ALTERNATE I (MAR 1988)

This alternate may be used in fixed-price contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified on the cover page of the contract (SF-26 or SF-33). To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment."

75. In section 2452.232-71, Alternate I is revised to read as follows:

2452.232-71 Voucher submission (cost-reimbursement).

* * * * *

ALTERNATE I (MAR 1988)

This alternate may be used in cost-reimbursement contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (a) for that in the basic clause:

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and three (3) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified on the cover page of the contract (SF-26 or SF-33).

75a. In section 2452.237-77, footnote 9 is redesignated as footnote 8.

PART 2453—FORMS

76. The authority citation for part 2453 is revised to read as follows:

2452.237-77 [Footnote 9 redesignated as Footnote 8]

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

77. Section 2453.213-71 is revised to read as follows:

2453.213-71 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505-2(b), Contracting Officers may use HUD Form 2542 for small purchases charged to the FHA Fund.

2453.213-72 [Removed]

78. Section 2453.213-72 is removed.

79. A new section 2453.237-70 is added, to read as follows:

2453.237-70 HUD Form 24002, GTR Performance Assessment (Final).

As prescribed in 2437.205, Government Technical Representatives shall use HUD Form 24002 to document the contractor's performance and the utility of products or services delivered. This form may also be used for other contracts.

Dated: August 2, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95-21767 Filed 9-1-95; 8:45 am]

BILLING CODE 4210-01-P