

CHAPTER 12. CONTRACT ADMINISTRATION12-1 DEFINITIONS.

- A. Contract Administration. The actions taken with regard to a contract (including simplified acquisitions) after it has been awarded are collectively known as contract administration. The goal of contract administration is to ensure that both the contractor and the Government meet the terms of the contract. Contracting Officers are responsible for ensuring that contracts are administered in accordance with FAR Part 42.
- B. Monitoring. For the purposes of this Handbook, the day-to-day oversight of the contractor's performance and compliance with the terms of his/her contract is referred to as monitoring. The GTR and any GTM(s) assigned to a contract are primarily responsible for monitoring it.

12-2 GENERAL DUTIES AND RESPONSIBILITIES OF THE CONTRACTING TEAM. As with its award, successful completion of a contract depends heavily upon a team effort by the program and contracting offices (see also paragraph 5-2.C). The principal members' duties include, but are not limited to, those listed below.

- A. The Contracting Officer is responsible for:
1. Ensuring that the parties to the contract are informed of their responsibilities;
  2. Notifying the contractor of the designation of the GTR/GTM(s) and the extent of their authority;
  3. Negotiating and executing modifications to contracts;
  4. Monitoring contractor expenditures and costs (cost-reimbursement contracts only). The Contracting Officer may delegate this responsibility to the GTR;
  5. Providing the GTR with copies of all correspondence issued to the contractor;
  6. Ensuring that work products are delivered in accordance with the terms and conditions of the contract. The monitoring of deliverables is usually delegated to the GTR;

7. Consenting to the placement of subcontracts under cost-reimbursement type contracts;
8. Certifying payment of a contractor's final voucher (cost-reimbursement contracts only) or any disputed invoices or vouchers;
9. Promptly resolving performance problems identified by the GTR or the contractor;
10. Making final decisions regarding protests and disputes (though these may be appealed to higher authority);
11. Negotiating settlements resulting from change orders, disputes, terminations for convenience, etc.;
12. Disallowing contractor costs, when warranted (cost-reimbursement type contracts only);
13. Maintaining the official contract file;
14. Requesting audits; and,
15. Performing administrative closeout of contracts, including negotiation of the final settlement.

B. The GTR<sup>1</sup> is responsible for:

1. Serving as the primary liaison between the contractor and the Contracting Officer;
2. Delegating duties and responsibilities to a GTM, when appropriate (see paragraph 11-3 E.2);
3. Ensuring consistency among multiple GTMs under a single contract when providing guidance to the contractor and evaluating the contractor's performance;
4. Maintaining a complete working file for each contract (see section 12-4);
5. Monitoring and evaluating the contractor's performance (see sections 12-5 and 12-15);

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<sup>1</sup> Unless specifically excluded, the term GTR shall also mean GTM (see 11-2.B).

6. Providing the Contracting Officer with copies of all his/her written correspondence with the contractor;
7. Informing the Contracting Officer of substantive oral communications (e.g., telephone conversations) with the contractor and providing notes and/or summaries of them;
8. Inspecting and evaluating products (including reports and drafts) or services, and making recommendations to the Contracting Officer regarding their acceptability (see paragraph 12-5 B.7);
9. Reviewing contractors' vouchers for reasonableness (cost-reimbursement contracts only) and certifying for payment all undisputed invoices for fixed-price contracts (see paragraph 12-6 B);
10. Monitoring the contractor's use of key personnel (see section 12-7);
11. Reviewing the qualifications of proposed subcontractors and the appropriateness of subcontracting contract work, and making recommendations to the Contracting Officer regarding consent to the placement of subcontracts (see paragraph 12-8.A);
12. Providing the contractor with, monitoring the use of, and reporting on Government-furnished property (see section 12-9);
13. Providing technical guidance and assistance to the contractor (see section 12-11);
14. Notifying the Contracting Officer immediately of:
  - a. Any actual or potential contractor performance problem (see section 12-12);
  - b. Any action or inaction by HUD personnel that may affect the contractor's ability to perform; and,
  - c. Any inappropriate action on the part of HUD personnel with regard to the contract (e.g., any action which creates a conflict of interest on the part of the contractor or causes the contractor to perform inherently governmental functions; see paragraph 6-1.C and FAR Subpart 7.5). The GTR should concurrently notify the program office management of any such action;
15. Providing technical assistance, as requested, to the Contracting Officer regarding disputes, settlements, litigation, patent and copyright problems, final payment during closeout, etc;

16. Providing timely reports on contractor performance to the Contracting Officer and other interested parties (see section 12-15); and,
  17. Assuring proper distribution of final products and other information resulting from the contract.
- C. The GTM is responsible for:
1. Serving as a technical advisor to the GTR; and,
  2. Performing any of the GTR's duties and responsibilities delegated to him or her (see paragraph 11-3 E.2).
- D. A GTR or GTM may not provide any direction to the contractor in those areas of responsibility assigned to another GTR or GTM (i.e., provide potentially conflicting guidance).

12-3 POST-AWARD DEBRIEFING AND ORIENTATION.

- A. Debriefing. Upon request, the Contracting Officer shall promptly debrief unsuccessful offerors. All debriefings shall be in accordance with FAR Subpart 15.5. As requested by the Contracting Officer, the GTR shall assist in preparing responses to requests for information (e.g., FOIA requests, debriefings; see also paragraph 5-7.T) and participate in debriefings.
- B. Post-Award Orientation. FAR Subpart 42.5 contains the principal guidance on post-award orientations.
1. Post-award orientation helps to:
    - a. Ensure that the Government and the contractor share a common understanding of the contract's terms and of each other's responsibilities and lines of authority; and,
    - b. Identify and remedy potential problems (e.g., ambiguities). (Note: The Contracting Officer must make any needed changes to the contract identified during an orientation by a written modification (see FAR 42.503-2 and section 12-14).)
  2. The Contracting Officer is responsible for deciding the need for (see FAR 42.501) and the extent of any orientation. In deciding if an orientation is needed, the Contracting Officer shall consider the factors set forth at FAR 42.502 and consult the GTR and any other appropriate program office or technical staff.

3. Post-award orientation may be used for task orders as well as new contract awards.
4. Orientation may be made by letter or conference.
  - a. A post-award letter (see FAR 42.504) essentially identifies the designated Government representatives and highlights any contractual requirements that merit the contractor's particular attention. It is appropriate for simple and routine contracts. It may also be appropriate for contracts where the new contractor was the incumbent, and there have been no significant changes to the terms of the new contract.
  - b. A conference (see FAR 42.503) will include a much more detailed review of the contract and the roles and responsibilities of the parties. A conference may be held in person or via electronic media (e.g., telephone, video conferencing, etc.).
    - (1) The Contracting Officer shall ensure that the contractor is notified of any requirement for the contractor's attendance at a post-award conference. If known at the time of issuance, the conference logistics and any specific requirements (e.g., personnel required to attend) may be stated in the solicitation or request for task order information. The Contracting Officer may include the requirement for physical attendance or other participation (e.g., via phone) in contracts and task orders, as he/she deems appropriate. The Contracting Officer should consult the GTR regarding any requirement for mandatory attendance by any contractor staff, including subcontractors.
    - (2) The Contracting Officer is responsible for ensuring that an appropriate conference agenda is developed and provided to the participants before the conference. Subjects to be covered during a conference may include, but are not limited to:
      - (a) Clarification of lines of authority and responsibilities (e.g., difference between GTR and GTM duties);
      - (b) Review and clarification of specifications or SOW, performance requirements, schedules and other contract terms and conditions;

- (c) Work planning;
  - (d) Reporting requirements (e.g., types, content, receipt points, etc.);
  - (e) The contractor's quality control measures;
  - (f) Furnishing and control of Government property;
  - (g) Anticipated or potential problem areas;
  - (h) Billing and payment procedures, including any required breakout of vouchered costs;
  - (i) Requirements of labor laws, including wage and hour monitoring, and reporting requirements; and,
  - (j) Subcontracting goals and requirements and the use of the various types of small business subcontractors.
- (3) The number and type of participants will depend upon various factors including, but not limited to, the complexity of the contract effort, the particular requirements of the contract, the contractor's experience, and the type of contractor (e.g., small business).
- (a) Normally, HUD will be represented by:
    - (i) The Contracting Officer or his/her designee (e.g., Contract Specialist assigned to administer the contract);
    - (ii) The GTR and any GTM(s); and,
    - (iii) Any other technical or specialized staff needed (e.g., IT, legal, etc.).
  - (b) The contractor will be represented by:
    - (i) The contract manager or project director;
    - (ii) The individual designated by the contractor to oversee the contract (e.g., contract manager, project director);

- (iii) A representative of the contractor authorized to act on its behalf, unless the individual in paragraph (B) above has such authority;
- (iv) As appropriate, any contractor personnel (including subcontractor personnel and consultants) who are or will be designated as key in the “Key Personnel” clause of the contract; and,
- (v) Any other contractor or subcontractor personnel whose technical expertise is needed or desirable.

(c) The Contracting Officer, or his/her designee, will chair and conduct the conference.

(4) The Contracting Officer shall ensure that a conference report, as required by FAR 42.503-3, is prepared and placed in the official contract file.

12-4 STANDARD GTR WORKING FILE. The GTR shall create and maintain a working file for each contract and task order assigned to him/her. The purpose of this file is to provide a history of the technical aspects of monitoring the contract. (Note: The contracting office maintains the official contract file; see also section 12-16.) It ensures continuity of monitoring (e.g., smooth transition to a new GTR) and ease of retrieval of information. The file should be logically arranged to permit ready access to its contents.

A. File Contents. The file should be logically arranged to permit ready access to its contents. To the degree possible, the contents of the file should be kept in electronic media (e.g., Word documents, spreadsheets, electronic mail, etc.). This will facilitate the exchange of information with the contracting personnel. The file must contain copies of:

1. The GTR/GTM appointment memorandum (see paragraph 11-3.D);
2. The complete RCS (see section 4-2);
3. The winning proposal and any revisions (see paragraphs 5-7.M and 5-7.N);
4. The contractor’s approved work plan, performance assessment (i.e., quality assurance) plan, etc., as applicable;
5. The contract and all modifications to it;

6. All deliverables (including technical progress reports) submitted by the contractor. (Note: Not all deliverables can be placed physically in the file. For those that cannot be, the working file should reference their location.);
  7. All correspondence and notes or summaries of substantive oral communications (e.g., telephone calls) with the contractor and other correspondence relevant to the contract (e.g., internal Departmental memoranda);
  8. Documentation regarding inspection and acceptance of deliverables and recommendations on disposition of deliverables;
  9. Reports of GTR visits to and inspections of contractor or subcontractor work sites;
  10. Periodic GTR reports on contract status made to program office management, as applicable;
  11. Periodic GTR reports to the Contracting Officer on contractor performance, as applicable;
  12. The distribution list for deliverables;
  13. A final assessment by the GTR of the contractor's performance and/or acceptability of products;
  14. All vouchers submitted and a payment register showing any balance of funds remaining (cost-reimbursement type contracts only); and,
  15. Documentation supporting all recommendations for Contracting Officer administrative actions (e.g., disallowance of costs, issuance of cure notices and termination, exercise of options, consent to subcontract, etc.).
- B. GTM Files. If any GTMs are assigned to the contract, they shall maintain files containing any of the items in paragraph A applicable to their assigned duties.
- C. Retention of GTR/GTM Files. Program offices are responsible for developing procedures for the retention and retirement of technical files and products. The GTR/GTM files must be retained at either the work site or the Federal Records Center in accordance with Records Disposition Schedule 3 in Handbook 2225.6.

12-5 MONITORING CONTRACTOR PERFORMANCE (see also section 12-5). Within HUD, most monitoring of contractor performance is delegated to the GTR.

- A. Purpose. The GTR monitors contractor performance to ensure that:

1. The contractor performs the services and/or delivers the products of the type and quality that the contract requires;
2. Performance is along the most efficient lines of effort;
3. Performance and deliveries are timely;
4. For cost-reimbursement type contracts, performance is within the total estimated cost or available funds limitations; and,
5. HUD will be able to promptly intervene when performance is deficient.

B. Monitoring Tools.

1. Contract. For all contract types, the principal source of guidance for monitoring a contractor's performance is the contract itself. For most contracts, the schedule and qualitative requirements for the work are contained in the specifications or SOW. The GTR and GTM(s) are expected to be fully knowledgeable of the technical requirements of the contracts they monitor. (Note: When any other monitoring tool conflicts with it, the contract prevails.)
2. Contractor's Proposal.
  - a. Technical. For negotiated contracts, the SOW may be revised to include changes proposed and negotiated during the award process (see also paragraph 5-7.Q). In rare cases, the successful offeror's proposal, or portions of it, may be incorporated into the contract. In such cases, the proposal supplements the technical direction provided in the SOW or specifications, but may not differ substantially from the final SOW or specifications in the contract. In cases where the technical proposal is not incorporated into the contract, the proposal may still be useful in determining if a contractor is making best use of his/her resources by comparing actual performance against his/her original plans. (Note: The information in the technical proposal is not binding on the contractor unless it is formally incorporated into the contract.)
  - b. Costs or Prices. The cost or pricing proposal will show how the costs of performance were budgeted. While the cost or price breakdown is not formally incorporated into the contract, it can serve to measure the contractor's cost performance (i.e., how well he/she manages the contract and controls the costs of performance).

3. Contractor's Work Plan and Schedule of Performance.

- a. Work plans may be used under both cost-reimbursement and fixed-price type contracts. Normally, they are used for cost-reimbursement, completion type (i.e., not repetitive or severable services) contracts for professional, developmental, or advisory services (e.g., research, studies, development of ADP software and systems, etc.). Under this type of contract, the SOW does not provide all the detailed instruction regarding the methods and scheduling of work under the contract. The contractor is required to develop a plan and schedule for completing the contract. (Note: Contracts of this type that exceed \$500,000 require the contractor to use systematic project planning and progress reporting; see paragraph 5-3.D and HUDAR Subpart 2442.11 for additional guidance.)
- b. A work plan is a concise, specific, written description of how the work under a contract will be accomplished. It supplements, but may not change, the more general requirements of the SOW. It also serves to explicitly demonstrate the contractor's and Government's mutual understanding of the contract's requirements. The work plan itself provides the GTR with his/her first opportunity to assess the consistency of the contractor's efforts with the requirements of the contract. It normally consists of two parts:
  - (1) A narrative that:
    - (a) Identifies the significant individual steps and tasks in the contractor's approach to completing the contract and the period of time needed to complete each one, expressed in terms of calendar dates. Some contracts are divided into phases. This permits HUD to assess the quality of the contractor's performance and the viability of the contract itself at key decision points (particularly before beginning a subsequent phase). This "phasing" helps prevent the contractor from progressing too far into a contract that will not yield what HUD needs. Phased contracts must require the contractor to report on the work completed at the end of each phase. They also require the contractor to submit or refine a plan for each phase before beginning it. Phases subsequent to the initial phase may be acquired through the use of options. Options permit HUD to stop work under the

contract without having to terminate it by not exercising the option for the next phase. Typical reasons for not exercising include unsatisfactory contractor performance and changes in HUD's needs to the degree that the contract no longer meets them;

- (b) Describes the staffing and other resources and their costs to be allocated to each of the steps and tasks; and,
  - (c) Provides the rationale for project organization, staffing, and other resources allocated to each step and task.
- (2) A graphic depiction of:
- (a) A schedule that shows, by reporting period, the start and completion dates of the steps and tasks described in the narrative; and,
  - (b) The cumulative planned and budgeted costs for each scheduled step and task for each reporting period over the life of the contract.
- c. The GTR shall review the work plan as soon as practicable once it has been received. The GTR shall promptly obtain any revisions needed to make the plan acceptable and approve it.
  - d. The GTR shall provide a copy of the approved work plan to the Contracting Officer for inclusion in the official contract file.

#### 4. Quality Control and Quality Assurance Plans.

- a. Under performance-based contracts (see section 6-2 and FAR Subpart 37.6), contractors must develop and use a quality control plan. These plans are for the contractor's use in monitoring his/her own performance (i.e. reports are not made to HUD showing progress or other compliance with the plans). HUD does not normally approve the plans. If the contractor's performance fails to meet the quality standards set forth in the contract, however, the GTR should obtain and review the contractor's quality control plan to determine if it contains deficiencies that may have contributed to the unacceptable quality. The GTR shall promptly report any defective plans to the Contracting Officer.

- b. Quality assurance plans are the counterpart to quality control plans. These are developed by the program office and the Contracting Officer and used to monitor the contractor's quality of performance. The performance assessment plan is set forth in the solicitation and the resulting contract. The specific content of the plan may be changed during the contract negotiations.
  
- 5. Progress Reports. Progress reports are used when the Government needs to assess the contractor's progress while the work is being performed to ensure that the most efficient and cost-effective methods are being used and/or that the contractor's approach is consistent with the SOW (i.e., the contractor is "on the right track"). Progress reports may be required under cost-reimbursement and fixed-price type contracts. Progress reports are always required when the contract requires a work plan as described in paragraph 3.b above. The reports provide the GTR with a snapshot of the technical and cost status of the contract for the period covered by the report. Progress reports may also serve to supplement the GTR's inspections of service contracts, particularly when limitations on time, personnel, and travel funds severely impair the GTR's ability to personally visit a contractor's work site.
  - a. Contents. Progress reports normally include:
    - (1) A narrative description of the progress made during the reporting period including:
      - (a) The current stage of completion (i.e., on, behind, or ahead of schedule) for each tracked significant step or task;
      - (b) All actual or anticipated performance problems or other factors (e.g., change in key personnel), their causes, and any net effect that they will have on the completion of any contract work (e.g., delays, increased costs, etc.);
      - (c) Any corrective action proposed and/or taken to remedy the problems, etc. under (1)(b) above;
      - (d) Any changes needed in the contractor's methods and/or schedule of work (including revised dates); and,
      - (e) The status of costs incurred, an explanation of significant over- or under-expenditures for the work completed during the reporting period, and their

anticipated effect on the total cost or price of the contract; and,

- (2) A graphic depiction of:
  - (a) Actual versus planned progress (i.e., degree of completion of planned work); and,
  - (b) Actual costs incurred versus planned and budgeted costs for the reporting period. Costs vouchered for a reporting period should be periodically compared with those reported to ensure consistency and accuracy in reporting and vouchering.

b. The GTR is responsible for:

- (1) Monitoring contractor compliance with the reporting requirements of a contract;
- (2) Advising the Contracting Officer and program office management of the need for additional, or reduction in existing, reporting requirements. The GTR must weigh the benefits of increased reporting against its extra cost. The GTR must also assess the risks involved in reducing any reporting requirements;
- (3) Evaluating progress reports. The GTR must:
  - (a) Assess the content of the report;
  - (b) Seek clarification from the contractor and/or technical experts within HUD, if needed, to ensure he or she understands the report; and.
  - (c) Identify any potential or actual performance problems revealed by reports and take immediate appropriate action (e.g., notify the Contracting Officer). Failure to read and accurately assess reports promptly can weaken or entirely erode HUD's ability to obtain remedial action from a contractor for deficient performance. For example, if a timely report discloses deficient performance, but HUD fails to take action within a reasonable period of time, the contractor may assume that HUD condones his/her performance. The GTR may have caused an actual change in the contract's

requirements (i.e., a “constructive change,” see paragraph 12-14);

- (4) Verifying the accuracy of information contained in reports. The GTR can ask for evidence that supports the reported progress (e.g., copies of drafts, texts, or designs prepared to date, or other information that should be in existence if work is proceeding according to plan). The GTR can also visit the contractor’s site and interview contractor staff and subcontractors to verify reported information; and,
  - (5) Advising the Contracting Officer and program office management regarding continuation of the next phase (e.g., exercise of option) of a phased contract (see paragraph 3.b above).
6. Vouchers and Invoices for Payment (all contract types; see section 12-6.
7. Inspections (all contract types).
  - a. The best way to determine the quality of the contractor’s performance is through an actual inspection of work or products. The GTR is normally delegated the authority to conduct inspections on the Contracting Officer’s behalf in accordance with the “Inspection” clause of the particular contract. The clause gives the GTR the right to inspect and test the work performed or products made under the contract at all stages of performance, wherever the work is being conducted (i.e., at contractor and subcontractor sites). The clause does not, however, permit the GTR to interfere with, or unreasonably delay, the contractor’s work. The GTR shall provide the Contracting Officer with a copy of an inspection report promptly after completing the inspection.
  - b. The period of time during which the Government must inspect and accept items delivered (“deliverables”) or services performed by a contractor is the acceptance period. Unless the contract specifically states otherwise, the acceptance period is seven calendar days. If the program office requires longer periods (e.g., 14 days to review and accept a draft evaluation report and 21 days to accept the final report), the Contracting Officer must ensure that the contract specifies those acceptance periods. The GTR must complete his/her inspection and provide the Contracting Officer with his/her assessment and recommendation regarding acceptance within the specified period. The GTR must immediately notify the Contracting Officer if he/she will not be able to complete the inspection within the stated period. The GTR may not request a

contractor to grant an extension of an acceptance period (see also 12-6 A.4.b (2) for information on related Prompt Payment Act requirements).

- c. Inspections may be routine, spot (i.e., unannounced; see various FAR Inspection clauses referenced in FAR Subpart 46.3.), or a combination of the two. The contract should specify any requirement for routine inspections (e.g., set the frequency, dates, or occurrences that trigger the inspections).
- d. The GTR must avoid taking or failing to take any action that may result in unreasonable interference or delay. Such actions and inactions include, but are not limited to:
  - (1) Failing to review deliverables or make inspections in a timely manner;
  - (2) Denying or failing to obtain contractor access to HUD premises on which contract work must be performed;
  - (3) Unnecessarily directing the contractor to stop work. (Note: Only the Contracting Officer may issue a stop work order.);
  - (4) Failing to advise the Contracting Officer promptly on matters such as:
    - (a) Approvals of work plans, particularly those that are required as a condition precedent to proceeding with the contract work; and,
    - (b) Required HUD consents to subcontracts; and,
  - (5) Directing a contractor to perform work that is outside the scope of the contract (see section 12-11).

## 12-6 CONTRACTOR COSTS AND PAYMENTS

### A. Payments.

#### 1. Requirements for Requesting Payment.

- a. Billing Format. Although most contracts require the submission of an invoice or voucher for payment, some contracts allow for payment to be made in other ways (e.g., directly from property sale proceeds, via letter of credit, etc.).

- (1) Under fixed-price contracts, a commercial invoice is acceptable for billing provided it includes all information required by FAR Subpart 32.9 to constitute a proper invoice.
    - (2) The SF-1034, "Public Voucher for Purchases and Services Other than Personal," is used for payments under other contract types (e.g., reimbursement of incurred costs under cost-reimbursement type contracts).
    - (3) The specific requirements for invoice content and submission will be stated in a contract's payment clause.
  - b. Cost-reimbursement Contracts (see FAR Subpart 16.3). Contractors are required to itemize their total request to the degree needed to permit an evaluation of the claimed costs. The level of detail in this breakout will vary by contract. The GTR and Contracting Officer will decide (usually when preparing the RFP) the degree of detail that will be needed on vouchers.
  - c. Labor-Hour and Time-and-Materials Contracts (see FAR Subpart 16.6). The contractor must break out labor costs by the number of hours billed for each labor category. Other costs, if allowed, must be sufficiently itemized to permit the GTR to assess their reasonableness.
  - d. Fixed-Price Contracts (see FAR Subpart 16.2). Invoices must clearly identify the products and/or services for which payment is requested and the price for each. Contractors may not invoice for partial or progress payments (i.e., for pieces of work or interim payment) unless the contract specifically authorizes them.
  - e. Performance-Based Contracts (see FAR Subpart 37.6). Performance-based payments are contract-financing payments that are not for accepted items and, therefore, are not subject to the interest-penalty provisions of the Prompt Payment Act. They are treated like progress, not interim, payments as described at FAR Subpart 32.5. The contractor must indicate on the invoice the deliverable item or event for which payment is requested (see FAR Subpart 32.10 for additional information).
2. GTR Review. The GTR shall review all vouchers and invoices prior to their payment to verify that they should be paid. For all requests for which the GTR recommends payment, the GTR shall complete the form HUD-27045 or otherwise provide evidence of the review as directed by the Contracting Officer and the payment office. The payment office will not

make payment on any request until the GTR provides it with such evidence of his/her review.

- a. Cost-Reimbursement Contracts. The contractor requests reimbursement of costs that he/she has incurred in the performance of the contract. Unlike fixed-price contracts, the invoiced costs are not associated with specific deliverables or priced services.
- (1) The Government has the right to disallow (i.e., not pay) costs that are determined to be unreasonable. Therefore, the purpose of the GTR's review is to help determine if all claimed costs are reasonable. To be considered reasonable, the costs must meet three tests:
    - (a) They are clearly associated with, and necessary for, work required under the contract;
    - (b) They are what a prudent person would pay for the item or service. This means that the GTR must determine that the amount is fair in light of the market place, if one exists, or by using other standards (e.g., specified labor rates in the contract, amounts HUD paid for comparable items in the recent past, the appropriateness of the labor mix used for the work performed, etc; and,
    - (c) They are allowable under Part 31 of the FAR. GTRs are not expected to know all the rules governing allowability of costs. The GTR shall consult with the Contracting Officer regarding any costs that appear questionable. The Contracting Officer will make a final determination of allowability.
  - (2) If the GTR cannot determine that the costs shown on an otherwise properly prepared voucher are fair and reasonable, he/she shall consult the Contract Specialist for assistance. As directed by the Contract Specialist, the GTR shall request additional information from the contractor if necessary. If the GTR cannot determine that costs are fair and reasonable because the voucher is too poorly prepared to decipher (e.g., voucher contains insufficient, information, arithmetic errors, illegible writing, etc.), the GTR should notify the contractor immediately and obtain a new, legible voucher. The GTR shall also notify the

Contract Specialist that the voucher could not be paid and that a replacement voucher has been requested.

- (3) The GTR shall determine if unreasonable costs are indicative of performance problems (e.g., the contractor is using inefficient methods or labor mix, etc.). If the GTR believes that to be the case, he/she shall contact the contractor and provide guidance to help the contractor remedy the situation. The GTR shall also inform the Contracting Officer of both the problems and the proposed or actual solutions.

b. Labor-Hour and Time-and-Materials Contracts. The GTR shall:

- (1) Verify that the rates claimed for labor categories agree with those specified in the contract. Rates for any billed labor that are not specified in the contract must be reviewed for reasonableness;
- (2) Review the number of hours billed for reasonableness; and,
- (3) Review other claimed costs (e.g., materials, travel, etc.) as required in paragraph a above.

c. Fixed-Price Contracts.

- (1) The GTR shall verify that:
  - (a) The price(s) identified on an invoice correspond to the price(s) specified in the contract; and,
  - (b) All deliverables and/or services included on the invoice have been inspected and are acceptable.
- (2) If the prices contained in the invoice are inaccurate or the invoice contains discrepancies, the GTR shall notify the contractor and consult the Contract Specialist for guidance (e.g., obtain a corrected invoice from the contractor, correct and annotate the invoice). It is critical that the contractor be notified immediately when an invoice cannot be paid because of a discrepancy. Failure to do so may result in HUD having to pay interest penalties under the Prompt Payment Act (see paragraph 4.a below and HUD Handbook 1900.29).

- d. Performance-Based Contracts (other than cost-reimbursement type; see FAR 32.10). The GTR shall verify that:
- (1) The deliverable(s) or services shown on the invoice corresponds to the schedule of deliverables or services; and,
  - (2) The contractor has performed adequately to warrant the payment.
3. Disputed Invoices.
- a. Whenever the amount of payment is in dispute, the GTR shall consult the Contracting Officer for direction and provide the following information:
    - (1) Disallowed Costs. The GTR shall identify the specific items of cost that are unreasonable and provide the Contracting Officer with his/her rationale, including an estimate of what reasonable costs should be; and,
    - (2) Unacceptable Deliverables or Performance. The GTR shall identify the unacceptable deliverable(s) and/or services for which payment should be denied. The GTR shall describe what steps have been taken to obtain correction.
  - b. The GTR may not:
    - (1) Disallow costs or withhold payments; or,
    - (2) Make any changes to a contractor's invoice or voucher without the prior approval of the Contracting Officer.
4. Payment Processing. If the GTR determines that vouchered costs are fair and reasonable, or invoiced prices should be paid, the GTR shall recommend that payment be made.
- a. Prompt Payment Requirements.
    - (1) Applicability. The following payments are subject to the requirements and interest penalties of the Prompt Payment Act:
      - (a) All payments under fixed-price contracts;

- (b) Final payments under all cost-reimbursement type contracts awarded before December 15, 2000; and,
- (c) All payments (interim and final) under cost-reimbursement service contracts awarded on or after December 15, 2000.

(2) Prompt Payment Requirements. The Prompt Payment clause requires that payment be made by the 30th day after the designated billing office receives a proper invoice from the contractor, or the 30th day after Government acceptance of supplies delivered or services performed, whichever is later. The Government pays interest if the 30-day deadline is not met. (Note: Interim vouchers under cost-reimbursement contracts awarded prior to December 15, 2000, are not subject to interest penalties. However, it is HUD policy that every effort be made to make payment within 30 days.) For purposes of computing interest on payments due, contracts shall state the number of days HUD has to inspect and accept deliverables (see 12-5 B.7.b). If no period is specified, the acceptance period is automatically seven calendar days (see FAR 32.904 for additional guidance).

b. Specific Processing Instructions.

- (1) Specific procedures for processing payment of acceptable invoices are established by the OCPO and the applicable payment offices. Different payment offices will vary somewhat in their procedures. GTRs shall consult the cognizant Contracting Officer for specific instructions.
- (2) Contracting Officers shall ensure that any special instructions which the payment office may need to process a particular invoice or class of invoices is included on the invoice and sent to the payment office. All invoices for interim payments under cost-reimbursement contracts awarded before December 15, 2000, shall be annotated with the following: "Interim payment under contract awarded prior to 12/15/00. Not subject to Prompt Payment Act."

B. Incurrence of Costs Under Cost-reimbursement Contracts.

- 1. Limitation of Cost (see FAR Subpart 32.7).

- a. All cost-reimbursement type contracts must contain a “Limitation of Cost” clause (see FAR Subpart 52.232-20). This clause expressly limits HUD’s obligation to reimburse the contractor to the “total estimated cost” amount stated in the contract. The program office must make appropriated funds available for the contract equal to the total estimated cost. Because the actual cost of completion of this type of contract may ultimately exceed the total estimated cost, the “Limitation of Cost” clause also limits the contractor’s liability. It states that the contractor has no obligation to continue with the work once his/her incurred costs reach the total estimated cost. Unless the contract is modified to increase the amount of the total estimated cost, the contractor must stop work at that point regardless of the state of completion of the contract work. If the contractor continues to work, he/she does so at his/her own risk. The GTR shall not direct a contractor to work beyond the point where all costs have been incurred.
- b. The “Limitation of Cost” clause also requires the contractor to notify the Contracting Officer, and provide a revised estimate of the total cost of the contract, whenever the contractor has reason to believe that:
  - (1) The costs he/she expects to incur in a specified upcoming period (30 to 60 days) plus the costs already incurred (even if not billed) will exceed a specified percentage of the total estimated cost stated in the contract; or,
  - (2) The total costs of performance (exclusive of any fee) will exceed or be substantially less than the total estimated cost stated in the contract.

This notification is a useful tool for tracking the contractor’s actual cost incurrence (i.e., spending) against the planned costs of performance (e.g., a serious problem might exist if a contractor had incurred 75 percent of the total estimated costs at a point in the contract where 50 percent of the total estimated costs were anticipated to have been incurred).

2. Limitation of Funds (see FAR Subpart 32.7). Sometimes it is not possible to fully fund the total estimated cost of a cost-reimbursement contract at the time of award (e.g., the period of performance will cross fiscal years and the program office decides to use money from two fiscal year appropriations). An amount to cover a specified portion of the contract is included at award and the remainder is added later in one or more increments. These contracts are referred to as incrementally funded. For these contracts, a Limitation of Funds clause (FAR 52.232-22) is

substituted for the Limitation of Cost clause. The clauses are very similar. The significant difference is that under the Limitation of Funds clause, the Government's obligation and the contractor's liability are limited to the total amount of funds available in the contract rather than the total estimated cost.

#### 12-7 CONTRACTOR USE OF KEY PERSONNEL.

- A. Designating Key Personnel. When successful completion of the contract's requirements depends upon the contractor's use of certain types of qualified key personnel (principally, contracts for services of a professional, technical, or research and development nature), HUD specifies the qualifications of key personnel in the solicitation and the contract. The offeror (if pre-award) or contractor (post-award) designates those individuals who will serve in key positions. If HUD concurs with the use of the proposed individuals, they are formally designated in the contract in the HUDAR clause at 2452.237-70, "Key Personnel" (see also HUDAR Part 2437). As appropriate, the time on task or level of effort of key personnel should also be set forth in the clause. The term "personnel" may include consultants and subcontractor employees.
- B. Changes in Key Personnel.
1. The contractor may not reduce the time or level of effort of key personnel devoted to the contract effort or replace key personnel without prior written consent of the Contracting Officer. The contractor must notify the Contracting Officer in advance of making any reduction or replacement. The notice must include a justification for the reduction or replacement and the credentials for proposed substitutions. In some cases, the Contracting Officer may ratify the reduction or replacement of key personnel after the fact (e.g., personnel resignation).
  2. The GTR shall assist the Contracting Officer in reviewing the credentials of replacement personnel and in evaluating the impact to the contract by proposed reductions or replacements. The GTR shall provide such evaluation promptly to the Contracting Officer.
- C. Monitoring Use of Key Personnel. The GTR is responsible for monitoring the contractor's use of key personnel. The GTR should perform quality control checks of the contractor's use of key personnel. The GTR may compare the projected use (as set forth in the contractor's proposal, work plan or in the contract itself) against the actual use reflected in progress reports and vouchers. The GTR is also expected to keep in regular touch with the contractor's key personnel. Should there be significant variation in use, the GTR must determine the cause and notify the Contracting Officer.

12-8 CONTRACTOR USE OF SUBCONTRACTORS AND CONSULTANTS.

- A. Consent to Subcontract. Under cost-reimbursement type contracts, the Contracting Officer must “consent” (i.e., agree) to the placement of certain types of subcontracts before the contractor may enter into them (see also FAR Subpart 44.2). As requested, the GTR shall instruct the Contracting Officer on the advisability of subcontracting the work. Also as requested, the GTR shall advise the Contracting Officer on the qualifications and ability of the proposed subcontractor to perform the work and on the technical content of the subcontract. The GTR shall consult the Contracting Officer whenever a contractor proposes to subcontract any portion(s) of the contract.
- B. Consultants as Subcontractors. Consultants engaged by contractors are considered subcontractors. Prior consent will be required whenever the nature or dollar value of their contracts requires it.

12-9 GOVERNMENT PROPERTY (see also FAR Part 45 and HUD Handbook 2200.1, Chapter 9).

- A. The responsibility for providing and monitoring contractor use of Government property is delegated to the GTR.
- B. The GTR must:
  1. Know what property and information HUD has agreed to furnish the contractor;
  2. Know when the property must be provided to the contractor. If no date is specified in the contract, the GTR must consult the contractor to determine when the contractor will need it to be able to meet the contract requirements;
  3. Locate the property and see that arrangements are made to get it to the contractor on time;
  4. Ensure that the property is in proper condition for use as intended. The GTR shall notify the Contracting Officer if property needs repair or replacement. As directed by the Contracting Officer, the GTR shall arrange for the repair or replacement of defective property;
  5. Determine if any special instructions on the property’s use are needed, or if any limitations on its use exist. The GTR must provide the contractor with such instruction and notify the contractor of any limitations (e.g., copyrights);

6. Assure that the contractor meets his/her custodial responsibilities under the Government Property clause (see FAR Subpart 45.5). Such responsibilities include conducting and maintaining an annual inventory of property for the duration of the contract;
7. Advise contractors and the Contracting Officer on the disposition of the property when contracts have been completed;
8. Annually, submit to the Contracting Officer an inventory of all property originally provided to, or acquired by, contractors that was determined to be surplus and subsequently was transferred to non-Government entities. The inventory shall include the description, quantity, acquisition cost and condition of each property item. (Note: The Government Property clause requires contractors to keep an accurate, current inventory of all Government-furnished property.) The Contracting Officer will forward a copy of this report to the Chief of the Property and Supply Branch within the Space Management Division in OAMS (Headquarters) or the cognizant Field ARD, within 45 calendar days after the end of the fiscal year.

12-10 CONTRACTOR ACCESS TO HUD FACILITIES.

- A. Issuance and Control of Building Passes. HUD contracts may require or allow contractor employees or subcontractors to work within HUD office space. The GTR must ensure that every contractor employee or subcontractor employee working on-site has, and properly displays, any required identification and/or building pass needed to gain access to the work site.
- B. Identification Badges and Building Passes. If contractor employees working in HUD space are permitted to be issued identification badges and/or building passes, the GTR shall arrange for the issuance of temporary identifications or passes, in writing, through the cognizant Administrative Officer.
- C. Clearance of Personnel. The Contracting Officer shall ensure that the requirements for clearance of contractor personnel who will work in HUD space are met (see HUDAR Subpart 2437.1 and the clause at 2452.237-75).
- D. GTR Monitoring Responsibilities. The GTR shall:
  1. Maintain a list of building passes issued, by contract employee name, Social Security number, and building pass expiration date. The list shall also include the date that passes are returned to the Administrative Officer (see D.3 below). This list shall be maintained in the GTR file;

2. Ensure that the contractor returns all building passes upon expiration of the contract, when employment of the contract employee is terminated, or when the employee no longer has a need for access to the building;
3. Ensure that all expired passes and passes of contractor employees who have permanently left the HUD site are returned to the Administrative Officer or other office as directed by the Administrative Officer; and,
4. Not approve any final invoice for payment until the contractor returns all building passes.

## 12-11 TECHNICAL GUIDANCE.

- A. Authority. The Government's authority to direct the actions of the contractor is defined by the written terms of the contract (i.e., the SOW and the contract clauses). Ideally, a contract should include all the direction the contractor will need to successfully perform it. This is not always feasible. Nevertheless, the SOW, supplemented by any work plans, is the contractor's principal source of technical direction. Given that the SOW in some contracts (notably, performance-based service contracts, see section 6-2) permits the contractor to develop many of his/her own methods, HUD may need to advise the contractor. The goal of this advice should always be to guide the contractor along the most efficient and cost-effective line of effort and not to create new requirements for the contractor. Guidance may include clarifying the requirements of the contract, suggesting methods or approaches, providing historical information relative to the work, or drawing the contractor's attention to specific aspects of the requirements.
- B. Responsibility. The GTR is delegated responsibility to provide technical guidance.
- C. Applicability. The term "technical guidance" is most appropriately used in the context of cost-reimbursement type contracts and all service contracts. The clause entitled "Conduct of Work and Technical Guidance" (HUDAR 2452.237-73), which is required in all HUD cost-reimbursement and service contracts, describes the nature of this technical direction and the limits on its use.
- D. Within the Scope of the Contract. Technical guidance must be within the scope of the contract (see also section 12-11). GTRs are strongly advised to always consult the text of a contract before providing guidance that may have an impact on its terms. If the terms of the contract are not clear, or need to be revised, the GTR should promptly consult the Contracting Officer for advice and corrective action. The GTR may not direct a contractor to take any action that will change the:
  1. Price or total estimated cost (or cost limit). GTRs may not take any action that creates, or that could logically be construed by a contractor to create,

a financial obligation on the part of the Government (e.g., directing a contractor to perform additional work not required by a contract). Some actions that do not immediately involve the obligation of funds (e.g., accelerating delivery schedules, directing a contractor to use more expensive labor, etc.) may later result in a contractor demand for more payment and an increase in contract price should the Contracting Officer determine to ratify the action;

2. The terms of the contract, unless the contract specifically authorizes them to do so. Even actions that might appear innocuous (e.g., relaxing a delivery due date for a few days) must be avoided. They may serve to set precedents or otherwise erode the legal agreement embodied in the contract. If the GTR believes the terms of a contract need to be changed (and not all can be), the GTR must consult with the cognizant contracting personnel. The terms that a GTR may not change include:

- a. SOW or specifications;
- b. Number or description of deliverables and products;
- c. Delivery or schedule dates;
- d. Period of performance; or,
- e. Any administrative provisions of the contract (e.g., clauses).

E. Direction of Contractor Personnel. GTRs shall not take any action that creates an employee-employer relationship between them and the contractor's employees or subcontractors (see paragraph 6-1.B). Any concerns with contractor employee and subcontractor performance or qualifications must be raised with a principal or designee of the contractor.

F. Written Guidance. Substantive technical guidance (i.e., that has a direct bearing on the requirements of the contract versus simple clarification or corrections) shall be provided in writing with a copy to the Contracting Officer. Any such guidance provided orally shall be confirmed promptly in writing. The GTR shall also maintain a record of technical guidance (including summaries of oral guidance) in the GTR working file.

## 12-12 CONTRACTOR PERFORMANCE PROBLEMS.

A. Deficient Performance. A contractor's performance is deficient when he/she fails to meet the terms of the contract. Deficiency may be in quality of work or products, timeliness of performance or delivery (including failure to make progress that endangers contract completion), or failure to meet other

requirements (e.g., reporting). When an actual or potential deficiency exists, the GTR shall:

1. Contact the contractor and direct his/her attention to the deficiency. The GTR should make every attempt to determine the full nature of the deficiency and whether or not it was excusable (i.e., whether or not it was within the contractor's power to control it). This often requires personal conversations with the contractor and key personnel.
  - a. If the contractor agrees that his/her performance is deficient (i.e., does not dispute the Government's position) and no formal action by the Contracting Officer is needed, the Contracting Officer may direct the GTR to obtain the contractor's voluntary commitment to remedy the deficiency.
  - b. If the contractor disagrees that a deficiency exists, the GTR shall make all reasonable efforts to determine the basis for the contractor's position and advise the Contracting Officer on his/her findings;
2. Promptly notify the Contracting Officer (and the program office if the GTM is from a different office) and follow any direction he/she provides;
3. Advise the Contracting Officer, the program office, and when authorized by the Contracting Officer, the contractor, on appropriate corrective action;
4. Make a written record of any informal (i.e., oral) communication with the contractor. If it is necessary to reduce the communication to writing, the GTR shall provide a copy of such communication to the Contracting Officer; and,
5. Verify that remedial action is taken. If the deficiency is not remedied, the GTR shall promptly notify the Contracting Officer and follow his/her direction.

B. Types of Remedies. Depending on the facts of each case, the Contracting Officer may take a variety of actions, including:

1. Directing the contractor to accelerate the work by using additional personnel or overtime. This action is subject to the availability of funds to pay for any resulting increase in costs and the availability of qualified personnel;

2. Substituting alternative methods or resources (e.g., changing the order of tasks, upgrading equipment). This action also may cause an increase in contract costs and or delay in completion of the contract;
3. Accepting late work or performance. If the program office can tolerate the delay, the GTR may recommend to the Contracting Officer that the contractor be allowed to deliver products or complete work late in exchange for “consideration.” (Note: “Consideration” means something of equal value to the benefit the contractor derives from the extra time or reduced quality. It may be a reduction in the contract price, additional work for the original price, or a combination of the two. It may not be something of value (e.g., extra work) that the contractor contributed prior to the deficiency.) If the Contracting Officer concurs, he/she shall issue a modification to change the contract period of performance or delivery schedule;
4. Issuing “cure notices” and “show cause notices.” If the contractor is in default (i.e., performance is unacceptable and inexcusable), *and* there is no other recourse, the Contracting Officer will issue a cure notice or a show cause letter. These two formal notices inform a contractor of his/her specific delinquent performance that, if left uncorrected, will result in a termination of the contract for default. The notices provide the contractor with a specific, and usually short, time period in which to correct the deficiencies. The Contracting Officer should consult with the GTR to ensure that no other appropriate remedy is available;
5. Terminating the contract for default. (Note: A full description of the use of terminations is found in FAR Part 49.)
  - a. When the Contracting Officer has determined to terminate a contract, the GTR shall provide the Contracting Officer with any documentation needed to support the termination. Documentation may include an assessment by the GTR that no other remedy should be pursued. If the Contracting Officer determines that the documentation is not adequate to support a termination for default, but agrees that the contractor’s performance is unacceptable, he/she may pursue a termination for the convenience of the Government (see paragraph B.6 below). The Contracting Officer should consult and coordinate with legal counsel when he/she intends to proceed with a termination for default.
  - b. GTRs should consult the Contracting Officer whenever they have questions regarding the use of terminations. A GTR must never threaten a contractor with termination as a means to achieving corrective action;

6. Terminating the Contract for the Convenience of the Government.
- a. HUD may terminate any contract (or part of a contract), at any time during performance, and regardless of the contractor's acceptable performance, *if* HUD determines that termination is in its best interest. "Best interest" usually includes such situations as:
- (1) The services or products are no longer needed (e.g., a change in programmatic mission or rules has made the contract requirements obsolete or even unallowable);
  - (2) A cost-reimbursement contract cannot be completed for the amount of funds in the contract, no additional funding is available, and no other remedy is possible; and,
  - (3) A contractor's performance is unacceptable, but there is insufficient documentation to support a termination for default.
- b. The GTR shall advise the Contracting Officer immediately when termination for convenience should be considered. This will permit the Contracting Officer to have the required notice prepared and ready when the termination is needed. This early action helps mitigate the costs to the Government as the contractor is entitled to all costs incurred up to the date of the formal termination by the Contracting Officer.
- c. Once a contract has been terminated for convenience, the contractor may submit a proposal to the Contracting Officer for reimbursement of his/her costs of terminating the contract (i.e., a "termination settlement proposal"). The GTR shall advise the Contracting Officer regarding any costs claimed by the contractor in his/her termination settlement proposal. This may involve a technical analysis of proposed costs (see paragraph 5-7.I). The Contracting Officer shall negotiate the terms of the settlement and may request the aid of the GTR. The Contracting Officer should consult and involve legal counsel when he/she intends to proceed with a termination for default.

C. Cost Overruns.

1. Definition. A cost overrun occurs when a contractor incurs costs in excess of the total estimated costs or available funds (in the case of incrementally funded contracts) of a cost-reimbursement contract without proper authorization from the Contracting Officer. (Note: Cost overruns may not

occur under fixed-price contracts because the contractor is responsible for completion of the contract regardless of the actual costs he/she incurs.)

2. Contractor Responsibility. The contractor is required to notify the Contracting Officer in writing whenever an overrun is anticipated (see paragraph 12-5.B.5 and the clauses at FAR 52.232-20 and 52.232-22). Failure to make notification before incurring an overrun puts the contractor at risk of liability for the overrun costs.
3. GTR Responsibilities. Whenever the GTR becomes aware of an actual or potential overrun he/she shall:
  - a. Not request or encourage the contractor to continue work. Such action may legally obligate HUD to reimburse the contractor for performing the unfunded work, despite any "Limitation of Cost" or "Limitation of Funds" clause in the contract. This action would also constitute an improper obligation, i.e., obligating the Government without sufficient funds to back up the obligation (see also paragraph 1-4.J);
  - b. Promptly notify the Contracting Officer and the program office;
  - c. Assist the Contracting Officer and program office management in determining one of the following courses of action:
    - (1) Increase the contract funding to permit completion of the work, if applicable program funds are available;
    - (2) If possible, modify the contract to eliminate work and the need for additional funding; or,
    - (3) Terminate the contract for the convenience of the Government. If the overrun has occurred and the contractor failed to give the required notice, the Government will not be obligated to reimburse the contractor; and,
  - d. If the program office decides to complete the contract and provide additional funding, it must submit a RCS (see section 4-2) to modify the contract to add the funds.

#### 12-13 CONTRACT DISPUTES AND APPEALS.

- A. Disputes. When the contractor and the Government disagree over the terms of the contract and/or the amount due to the contractor, they are said to be in dispute.

All HUD contracts contain the clause at FAR 52.233-1, “Disputes,” which provides the means for resolving these formal disagreements.

- B. Claims. Under the “Disputes” clause, contractors may file a claim with HUD for money that they believe they are owed, or for other contractual relief (e.g., change in contract terms, etc.). Contractors may have up to six years to submit claims against the Government. In general, the Contracting Officer must render a written decision on the claim within 60 days after his/her receipt of a written claim. The contractor may then appeal the decision to a judicial body (e.g., HUD Board of Contract Appeals or U.S. Claims Courts) if he/she disagrees with the Contracting Officer’s decision. The “Disputes” clause requires the contractor to proceed diligently with the performance of the contract and in accordance with the Contracting Officer’s decision pending final resolution of the dispute. FAR Subpart 33.2 provides detailed guidance on disputes and claims.
- C. GTR Assistance. As requested by the Contracting Officer, the GTR shall provide the Contracting Officer with technical assistance and documentation relative to the contract required for resolution of a dispute.
- D. Legal Consultation. The Contracting Officer shall consult and coordinate with legal counsel as needed when resolving disputes and claims.

#### 12-14 CONTRACT MODIFICATIONS (see also FAR Part 43).

- A. Definition. A contract modification is a written change in the terms of a contract. During the life of a contract, it usually becomes necessary to revise its terms. Such revisions may change the requirements, formally resolve problems or effect actions provided for by the terms of the contract (e.g., exercise an option).
- B. Responsibilities.
  1. Only Contracting Officers are authorized to modify contracts.
  2. The GTR’s principal role is to advise the Contracting Officer on the need for a modification, and at times, to develop, or oversee the development of, the content of the modification.
- C. Initiating Modifications. The contractor, the GTR or the Contracting Officer may identify the need for a modification. Contractors often identify the need to the GTR, who in turn, communicates it to the Contracting Officer (e.g., the contractor proposes a better method for performing the work or discovers a mistake in the technical requirements, etc.). Regardless of the type of modification involved, close coordination between the GTR and the Contracting Officer is essential. Any contractual issues should be considered before submitting a request to change the technical requirements of a contract. The GTR should consult contracting staff for advice.

- D. “Within-Scope” vs. “Out-of-Scope” Changes. The scope of a contract is defined by its terms. The scope has two basic parameters: the technical description of the type and quality of the work the contractor must perform (i.e., SOW or specifications); and, the specific amount or quantity (or range of amounts or quantities) of work and/or products the contractor must do and/or deliver (usually specified in Section B of the contract).
1. Within-scope changes are either authorized by specific terms of the contract (e.g., Changes, Government Property, Limitation of Cost, Option, or Termination clauses) or a result of actions taken pursuant to such terms (e.g., resolution of disputes, termination settlements, change order equitable agreements). Modifications executing within-scope changes are executed through unilateral or bilateral modifications depending upon the circumstances.
  2. Out-of-scope changes, often referred to as “cardinal changes,” would require the contractor to perform work that is materially different, either in substance or magnitude, from that agreed upon in the original contract. Such requirements should be met through the award of a new contract. Cardinal changes are created by:
    - a. Requiring a contractor to do work that was never intended by the contract (e.g., ordering inspections of single family properties under a contract for inspections of multifamily properties, ordering a contractor to provide technical assistance to recipients of Public Housing Drug Elimination grants under a contract for technical assistance to recipients of Fair Housing grants); or,
    - b. Requiring a contractor to increase the amount of work or products, or duration of services under a contract beyond that which was originally required (e.g., ordering 300 property inspections under a contract that specified a maximum of 50).
  3. Constructive Changes. The GTR may inadvertently create a change to a contract by taking, or failing to take, an action (e.g., relaxing reporting or delivery requirements or due dates, requesting deliverables not specified in the contract, etc.). Such actions may constitute a constructive change to the contract if the contractor alters his/her performance accordingly. If the action or inaction results in an otherwise allowable change, the Contracting Officer has the discretion to formally ratify the action through an appropriate modification to the contract (see paragraph 1-4.J). If the Contracting Officer does not ratify the action, the GTR could be held liable for the cost of the action (see paragraph 11-5.B).

4. Contracting Officer's Determination. The Contracting Officer shall make the final determination, in light of the facts of a given case, if a proposed change is properly made through the Changes clause, or if it constitutes a new procurement.
- E. Modification Types (see also FAR Part 43). There are two general categories of modifications:
1. Bilateral (i.e., two party) modifications are established by mutual agreement and signed by both the contractor and Contracting Officer. Bilateral modifications are called "supplemental agreements" because they go beyond the original requirements of the contract. They are essentially additional contractual agreements within a contract. They include:
    - a. Equitable Adjustments (in price or terms) negotiated as a result of a change order;
    - b. Definitization of Letter Contracts (see FAR 16.603);
    - c. Other Mutual Agreements of the Parties to the Contract. Examples include incorporating the terms of negotiated partial termination settlement agreements, extending performance periods, funding a cost overrun, etc.; and,
    - d. Terminations (see section 12-12).
  2. Unilateral (i.e., one-party) modifications are signed by the Contracting Officer only. They include:
    - a. Administrative (e.g., change the name of the GTR, paying office address, etc.). These modifications do not alter the substance of the contract's requirements;
    - b. Change Orders.
      - (1) Definition. A change order directs the contractor to make substantive changes in such areas as the description of the services (e.g., SOW), drawings, designs, specifications, time of performance, place of performance, place of delivery, or method of shipping or packing. Every HUD contract contains a Changes clause that specifies the changes that may be made through a change order. The exact changes permitted will vary by contract type.
      - (2) Changes Within Scope. All changes made under the authority of the Changes clause must be within the general

scope of the contract. The Contracting Officer may require the GTR to explain or justify how a proposed change is within the scope of the contract if it is not clearly apparent.

- (3) Changes in Costs or Schedule. The GTR shall advise the Contracting Officer on reasonableness of, and need for, any claimed increase in costs (“equitable adjustments”) and/or required additional time of performance. The GTR shall also advise the Contracting Officer on the reasonableness of proposed decreases in costs or prices resulting from change orders that delete work.
  - (4) Whenever practicable (e.g., proposed changes are known to the contractor and HUD well in advance of their implementation), contracting personnel are encouraged to condense the change order process into one modification action. Contracting personnel should contact the contractor, discuss the proposed changes, and negotiate the terms of equitable agreements before issuing the change order. This will help eliminate the serial process of issuing the change order, then negotiating the terms of the agreement and issuing a final bilateral modification. A modification that includes both the change order and the terms of the resulting equitable agreement must be a bilateral document; and,
- c. Other Changes Authorized by Contract Clauses. The most common of such changes are:
- (1) Incremental Funding modifications to add funds to incrementally funded cost-reimbursement contracts (see paragraph 12-6.B.2);
  - (2) Options (see also FAR Subpart 17.2).
    - (a) Notice of Intent to Exercise an Option. Contracts containing options specify dates by which HUD must notify the contractor of its intent to exercise each option. Should HUD fail to meet the date, it loses its ability to unilaterally require the contractor to perform the option as written (i.e., the contractor could insist upon renegotiating the terms of the option). To avoid this extra work and potential increase in price, the GTR must ensure that the Contracting Officer is notified in writing of the program office’s intent to exercise an option well in

advance of the due date (usually, 30 days). The notice does not commit HUD to exercising the option. Therefore, the program office can still change its mind up to the date that the option is exercised. The notice should include a statement that:

- (i) The program office continues to have a need for the services and/or products included in the option; and,
- (ii) The contractor is performing satisfactorily.

(Note: If the notice does not include the above statements, the RCS (see section 4-2) must contain them.)

- (b) Contracts may also specify a date by which an option must be exercised. When that is the case, the RCS for an option must be submitted to the contracting office with enough lead-time to permit preparation and issuance of the modification before the effective date of the option. Generally, this means submitting the RCS 30 days before the effective date. No contract option may be exercised after the contract has ended.
- (c) The GTR shall keep a record of the due dates (e.g., tickler file) for option notice requests and RCS submissions for each contract.

- F. Negotiating Modifications. Modifications may require the negotiation of technical requirements and costs or prices before they can be made final. Contracting Officers shall follow the guidance set forth in section 5-7 regarding cost and price analysis, pre-negotiation objectives, and negotiation documentation when negotiating terms and costs or prices of modifications.

## 12-15 EVALUATING AND REPORTING CONTRACTOR PERFORMANCE (see also section 12-5).

- A. General. The evaluation and reporting of a contractor's performance constitute one of the most critical tasks that the GTR performs. Performance is measured against the specific requirements of each contract. It is measured in both qualitative (i.e., how well work was performed) and quantitative (e.g., timeliness) terms. Contractor performance reports enable the Contracting Officer to determine if contractual terms are being met and, if not, what action is required on

his/her part. They provide program office management the information needed to determine if a contract is yielding what was required (and in some cases anticipated) and, if not, what effect it will have on program mission. Last, performance reports provide a record of the contractor's performance, which can be used in evaluations of the contractor for future contract awards. FAR Subpart 42.15 provides further guidance regarding contractor performance information. For the purposes of this section, the term contract includes task orders. (Note: Construction and architect/engineer contracts must be evaluated in accordance with FAR Part 36. Contractor performance under contracts awarded pursuant to FAR Subparts 8.6 and 8.7 may not be evaluated.)

B. Reporting System.

1. Evaluations of contractor performance shall be made using the internet-based Contractor Performance System (CPS) maintained by the National Institutes of Health (NIH) within the Department of Health and Human Services. The CPS is a Government-wide database of contractor past performance information. The CPS shall be used to initiate, develop, review and finalize contractor past performance data.
2. Each Contracting Officer and Contract Specialist is provided access to CPS through a user ID and password. Higher level contracting management will also have access to CPS to permit review at a level above the Contracting Officer to consider disagreements between the parties regarding the evaluation (see FAR 42.1503).
3. GTRs may be provided access to CPS at the discretion of the HCA.
4. Contractors should be strongly encouraged to obtain access to CPS. Contracting Officers shall notify contractors of the HUD's use of CPS and as requested direct them to self-register in CPS. Normally, this notice is made at the time of contract award.
5. The Policy and Field Operations Division within the OCPO has overall responsible for CPS administration at HUD. Each FCO Director shall designate an Organization Administrator to manage CPS within the FCO.
6. Detailed information and guidance on the use of the CPS is available at the CPS internet site:

<http://cps.od.nih.gov/>

C. Frequency.

1. Final Evaluations. In accordance with FAR 42.1502, a final evaluation shall be made of each contract with a value greater than \$100,000. The

GTR shall make a final evaluation of the contractor's performance once all work under a contract has been completed. The report shall cover the entire contract period.

2. Interim Evaluations.

a. In addition to the final evaluation required in paragraph 1 above, the following interim evaluations are mandatory:

(1) Multi-year contracts (two or more years) shall be evaluated on an annual basis. For contracts with option periods, evaluations shall be completed at least 120 days in advance of the end of the contract period to permit timely consideration of contractor performance prior to the exercise of the following option.

(2) Contracts with a duration of less than two years shall be evaluated at the mid-point and before the exercise of any option (as required in paragraph a above).

b. Certain contracts (e.g., high dollar values and long duration such as HUD's Information Technology System (HITS), single-family marketing and management (M&M) services, multi-family property management) may warrant more frequent evaluations. In these instances, the level of frequency will be left to the discretion of the Contracting Officer. Contractor performance evaluations for major contracts will be subject to the review of the Contract Management Review Board (see paragraph H.2 below).

D. Evaluation Content.

1. Format. All evaluations shall be completed using the online automated CPS form.

2. Content. The evaluation shall accurately assess:

a. The quality of the contractor's performance;

b. The contractor's ability to control costs of performance (cost-reimbursement contracts only);

c. The timeliness of performance; and,

d. The contractor's business relations with HUD.

3. As needed, the GTR may provide supplementary information to specifically address items such as:
  - a. Deficiencies and performance problems the resolution of which is still pending;
  - b. Other non-performance-related factors having an actual or potential impact on performance (e.g., changes in key personnel, significant subcontracting, etc.); and,
  - c. The likelihood of successful completion or continued acceptable performance.
4. Evaluations must reflect the GTR's independent assessment of the contractor's performance based upon factual information (e.g., inspections of services and products, progress reports submitted by the contractor, on-site observations, etc.). The GTR must ensure that the information reported by the contractor is accurate before incorporating any of it into, or using it for the basis of, his/her evaluation.
5. The GTR shall obtain contractor performance information from all GTMs assigned to the contract and any other relevant sources (e.g., end users). A particular GTM's input may be limited to one or more of the evaluation criteria on the on the CPS evaluation form in accordance with the GTM's responsibilities and knowledge of the contractor's performance. The GTR shall resolve any disagreements with any GTM concerning past performance information before completing his/her evaluation. The GTR shall make the final decision regarding such disagreements.

E. Evaluation Process.

1. The Contract Specialist will originate the performance evaluation in CPS. CPS will notify the GTR via email that the evaluation process has been initiated.
2. The GTR will either prepare the evaluation online or provide information to the contracting office so that it may complete the evaluation. If the GTR completes the evaluation, he/she shall notify the Contract Specialist when the evaluation has been completed. The notification may be sent from CPS if the GTR has been given access. Otherwise, the GTR shall send the evaluation to the Contract Specialist.
3. The Contract Specialist shall review the evaluation and resolve any disagreements concerning the GTR's evaluation and advise the Contracting Officer when it is complete. The Contracting Officer may review the evaluation at his/her discretion. Once all reviews are

completed, the contracting office shall notify the contractor that the evaluation is available for review on the CPS internet site.

4. The contractor shall be given a minimum of 30 days to provide comments, rebuttals, or additional information concerning the evaluation.
5. As requested by the contracting office, the GTR and GTMs, if any, shall promptly review comments, rebuttal, or additional information provided by the contractor. The GTR shall advise the Contracting Officer of his/her review results and provide the Contracting Officer with any information needed to respond to the contractor's statements, rebuttal or other information, and/or resolve any disagreement. The GTR shall assist the Contracting Officer or higher level contracting official in resolving disagreements (e.g., participate in meetings).
6. All disagreements with the contractor concerning the evaluation shall be resolved by a contracting official at least one level higher than the Contracting Officer (e.g., OCPO Division Directors, FCO Directors). The Contracting Officer shall ensure that the resolution of all disagreements is adequately documented. Once resolution has occurred, the Contracting Officer shall ensure that a final evaluation is entered into CPS and the contractor is notified.

F. Coincidence with Program Reporting Requirements. Some HUD programs may require periodic assessments of contractor performance that are independent of any other reporting required by the Contracting Officer or program management. To the degree practicable, these assessments should be scheduled to provide maximum benefit to the evaluation of the contractor's performance made in accordance with this section 12-15.

G. Retention and Distribution of Performance-Related Information.

1. Hard copies of performance evaluations, contractor responses, and review comments shall be maintained in the official contract file.
2. CPS will automatically archive all electronic evaluation information associated with a given contract three years after the contract expires,.
3. If the GTR is not within the initiating program office, a copy of his/her final assessment should be provided to that office.
4. The Contracting Officer is responsible for ensuring that performance evaluation information is protected from unauthorized disclosure in accordance with FAR 42.1503. The Contracting Officer shall inform all other parties having access to such information of the prohibition against

disclosure to other than authorized Government personnel or the contractor.

H. Other Performance Reviews.

1. Presentations to Departmental Management. At times it may be necessary or advisable for the GTR and Contracting Officer to meet with Departmental management on an ad hoc basis to review contractor performance or progress (e.g., routine reporting methods reveal the need for significant changes in the method or approach to the work). Normally, management will call for such briefings. The GTR or Contracting Officer may also request to make such a briefing. The GTR will be responsible for reporting on technical issues. The Contract Specialist or Contracting Officer will be responsible for reporting on contractual issues.
2. CMRB Review. Interim contractor performance evaluations (see for major contracts will be subject to CMRB review (e.g., prior to exercise of options or finalizing significant modifications) in accordance with the current CMRB rules. The CMRB may require a presentation of the interim evaluation to the Board by the responsible Integrated Program Team (IPT) or members of it.
3. Reviews of Major Contracts. The HCA may select individual major contracts for special review. Normally, these will be large dollar value contracts (e.g., in excess of \$1,000,000) for services of a complex or programmatically sensitive nature (e.g., pilot testing of new program management or delivery approaches). These reviews may be conducted before a forum of interested parties such as the Contracting Officer and program office management. Their purpose is to ensure that major contracted efforts receive appropriate management attention. They also serve to create a forum in which program and contract staff can focus on problems and agree on necessary corrective action. The cognizant GTR and Contract Specialist shall be expected to participate in the review by briefing the interested parties on the current status of the contract.
4. Reports to Program Management.
  - a. The GTR shall provide reports as requested to the program office or offices having an interest in the contract (e.g., the initiating office and any end user offices). Program offices may establish the frequency and format of reports on a contract-by-contract basis to best meet their needs.
  - b. To avoid undue burden on the GTR, the content of these reports should be similar to that of the reports required under this section 12-15 and, whenever practicable, the reporting period for a given

contract should coincide with the GTR's regular interim reporting to the Contracting Officer.

12-16 CONTRACT CLOSEOUT. Closeout refers to the administrative actions taken to retire a completed contract. A contract is considered completed and ready for closeout once all work has been finished, all deliverables (including reports) have been received and accepted, or otherwise disposed of, and all financial matters (e.g., final payment) have been settled. Closeout begins with the GTR's submission of the final performance evaluation to the Contracting Officer.

A. Closeout Documentation. The GTR shall provide to the Contracting Officer all documentation related to the performance of the contract that the GTR has not already provided during the course of the contract. Documentation that does not appropriately belong in the official contract file (e.g., notes of phone conversations, copies of documents previously sent to the Contracting Officer, etc.) should not be sent to the Contracting Officer. The Contracting Officer is responsible for ensuring that all required documentation required for close out of the contract is obtained from the GTR. The Contracting Officer will specify the documentation he/she needs. Such documentation may include:

1. Final performance evaluation (see section 12-15);
2. Payment registers;
3. Deliverables;
4. Copies of reports, inspection results, and acceptability determinations; and,
5. Pre-decisional recommendations regarding payment, key personnel, acceptance or rejection of deliverables, disputes, etc.

B. Closeout. Once the Contracting Officer receives the final performance evaluation, he/she shall promptly take all administrative actions needed to close out the contract. These are described at FAR 4.804-5. Additional detailed instruction is available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/arconnect.htm>

C. Final Payment. Final payment shall be made promptly once the Contracting Officer has determined that all contract requirements have been met and that the final payment amount is proper. The Contracting Officer must approve requests for final payments before they are processed.