

CHAPTER 1. GENERAL

- 1-1 PURPOSE. This handbook prescribes Departmental policies and procedures to be followed in the procurement of personal property and nonpersonal services. This guidance supplements the direction provided in the Federal Acquisition Regulation (FAR), Title 48, Chapter 1 of the Code of Federal Regulations (CFR) and the HUD Acquisition Regulation (HUDAR), Title 48, Chapter 24 CFR. The FAR and HUDAR shall be the primary sources of procurement policy and procedural guidance for all Departmental contract actions governed by them and shall take precedence where any guidance provided in this handbook conflicts with them. This handbook does not seek to duplicate the detailed content of other sources of formal policy (*e.g.*, regulation, Executive Order, statute) or Departmental procedures (*e.g.*, OCPO Acquisition Instructions). Where such detailed guidance exists, the handbook will normally reference the source of the guidance. In some cases, other sources may be excerpted to provide a context for the handbook's guidance.
- 1-2 APPLICABILITY. The FAR sets forth uniform policies and procedures applicable to Federal agencies in the procurement of personal property and nonpersonal services (including construction). The policies and procedures contained in this handbook apply to all procurements of supplies and services which are subject to the FAR and which are processed by the Office of the Chief Procurement Officer (OCPO), and any other Departmental entities (*e.g.*, Administrative Officers) to which contracting authority has been redelegated in accordance with published Departmental redelegation authority. The Senior Procurement Executive (*i.e.*, the Chief Procurement Officer; see paragraph 1-4.B.1) may waive policies and procedures that are not mandated by statute or regulation. Requests for waivers of the requirements of this handbook shall be submitted in writing to the Chief Procurement Officer.
- 1-3 ABBREVIATIONS AND DEFINITIONS.

“Accounting Office” means the Office of the Assistant Chief Financial Officer for Accounting and includes that Office's field components (*e.g.*, CFO Accounting Center in Fort Worth, Texas).

“Acquisition” means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“CFO” means the Chief Financial Officer.

“CIO” means the Chief Information Officer.

“CMRB” means the Contract Management Review Board, the Departmental entity responsible for reviewing and approving strategic procurement plans and significant actions (see paragraph 4-1.A).

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of funds. The term includes, but is not limited to, contract awards and notices of awards, job orders or task letters issued under basic ordering agreements, letter contracts, orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance, and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C.6301, et seq. For descriptions of various types of contracts, see FAR Part 16.

“Contract Specialist” means an employee of a HUD contracting office who acts as the Contracting Officer’s representative with regard to procurement matters, and who is responsible for the day-to-day award and/or administration of contracts. The Contract Specialist performs many of the substantive contracting duties and functions for which the Contracting Officer is ultimately responsible (e.g., preparing solicitations, evaluating proposed costs or prices, conducting negotiations, preparing determinations and contract documents, etc.). The Contract Specialist may have delegated authority to execute contract actions that financially obligate the Government.

“Contracting Activity” means an organizational unit of the Department to which the Secretary has delegated broad authority to purchase or contract for supplies and services as established by the published HUD Delegations of Procurement Authority and the HUDAR. OCPO is HUD’s contracting activity.

“Contracting Office” means a HUD office that awards and/or administers a contract for supplies or services.

“Contracting Officer” means a HUD employee expressly authorized to enter into, administer and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer (e.g., Contract Specialist) acting within the limits of their authority as delegated by the Contracting Officer. Within HUD, Contracting Officer authority is delegated from the Secretary through the Senior Procurement Executive (Chief Procurement Officer) and the cognizant Head of Contracting Activity. All delegations must be in writing.

“CPO” means the Chief Procurement Officer.

“Department” means the Department of Housing and Urban Development.

“E.O.” means Executive Order issued by the President of the United States.

“FCO” means Field Contracting Operations (see section 8-2).

“Field” refers to those HUD activities and functions conducted outside of HUD Headquarters. Such activities and functions may or may not be organizationally assigned to Headquarters.

“FHA” means the Federal Housing Administration.

“FR” means the Federal Register.

“Government” means the U. S. Government or Federal government unless otherwise indicated.

“GSA” means the General Services Administration.

“GTM” means Government Technical Monitor as defined at HUDAR Subpart 2402.1 (see section 11-2).

“GTR” means Government Technical Representative as defined at HUDAR Subpart 2402.1 (see section 11-2). (Note: The term is synonymous with Contract Oversight Specialist, which is occasionally used in HUD to denote the same function.)

“HCA” means Head of the Contracting Activity (see paragraph 1-4.B.2).

“HPS” means the HUD Procurement System, the database system used to record and report information on HUD’s contract actions exceeding the SAP threshold (see also SPS).

“IAA” means Interagency Agreement (see section 6-3).

“IFB” means “Invitation for Bids,” the document used by the Contracting Officer to solicit offers from prospective offerors for a contract awarded through sealed bidding (see FAR Subpart 14 for detailed information).

“IT” means Information Technology as defined at FAR Subpart 2.1. It includes IT equipment and related supplies, services and software (see section 6-4).

“LPTA” means the lowest price technically acceptable, the negotiated contracting selection process under which the technically acceptable proposal with the lowest evaluated price is selected for award (see FAR 15.101-2 and paragraph 5-7B).

“Negotiated acquisition” and “negotiation” have the meaning provided at FAR Part 15.

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

“OCIO,” means the Office of Administration’s Office of the Chief Information Officer.

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

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to IFBs are offers called "bids" or "sealed bids." Responses to RFPs are offers called "proposals." (Note: Responses to requests for quotations under simplified acquisitions are considered to be price quotations and not offers.)

“Offeror” means a business concern, individual or other organization that submits an offer for consideration for award of a contract. The term means a bidder when used in the context of sealed bidding.

“OFPP” means the Office of Federal Procurement Policy within the Office of Management and Budget.

“OGC” means the Office of General Counsel. Except as otherwise specifically indicated, OGC refers to both the Headquarters component and the Regional Counsels in the field.

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

“OMB” means the Office of Management and Budget within the Executive Office of the President.

“POH” means Primary Organization Head, a HUD official who is responsible for a major organizational component of HUD, and who reports directly to the Secretary or Deputy Secretary. The Assistant Secretaries and equivalent Departmental management (e.g., Inspector General, General Counsel, President, GNMA, Chief Financial Officer, etc.) are POHs (see also HUDAR 2402.101).

“Procurement” (see “Acquisition”).

“Program Office” means the office within the Department that initiates and/or has primary responsibility for, or interest in, a procurement. For Headquarters procurements, the program offices may be any of the various Assistant Secretary-level Offices (e.g., Community Planning and Development, Housing, Policy, Development and Research, Administration). In the field, this office may be any program office located within a State or Area Office or other organizational level (e.g., Homeownership Center, Multifamily HUB) that has been authorized by its parent Headquarters office to obtain services or supplies via procurement contracts. The primary program office for Field procurement is the Office of Housing or any of its field-based components. When referring to procurement requisition processes (see Chapter 4), the term “program office” shall also mean the initiating office.

"Purchase order," when issued by the Government, means an offer by the Government, not the vendor, to buy supplies or services using simplified acquisition procedures.

"REO" means Real Estate Owned and refers to HUD's Single Family acquired property program.

"RFP" means Request for Proposals (see FAR 15.203 for detailed information), the document used by the contracting office to solicit proposals from prospective offerors for a contract to be awarded through competitive negotiation.

"Sealed Bidding" is a method of contracting that employs competitive bids, public opening of bids, and awards (see also FAR Subpart 14.1).

"SAP" means simplified acquisition procedures, the various contracting methods prescribed in FAR Part 13. SAP include, but are not limited to purchases using: purchase orders; the Governmentwide commercial purchase card (see also paragraph 9-9.A).

"Shall" means the imperative.

"Should" means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

"Simplified acquisition threshold," means \$100,000.

"SOW" means Statement of Work (see paragraph 5-3.D).

"SPE" means Senior Procurement Executive (see paragraph 1-4.B.1).

"SPS" means the Small Purchase System, the database system used to record and report information on HUD's simplified acquisitions other than purchase card purchases.

"SSA" means Source Selection Authority, as defined at HUDAR Subpart 2415.303(a). (Note: Within HUD, this is also commonly referred to as the Source Selection Official.)

"TEP" means Technical Evaluation Panel as defined at HUDAR 2415.303(b).

1-4 POLICIES.

A. General.

1. Contracting Methods. The Contracting Officer shall be responsible for determining the contracting method (i.e., simplified acquisition procedures, sealed bidding or negotiation) appropriate to each procurement in accordance with the applicable procedures set forth in FAR Parts 13, 14, 15. In determining the contracting method, the

Contracting Officer shall consider all relevant factors, such as the nature of the requirement, amount of available lead time, total estimated dollar value, ability to accurately estimate a fixed price, need for evaluation of factors other than price, etc. The Contracting Officer shall also assess the suitability of the requirement to other available methods of acquisition, including task orders under existing contracts, interagency agreements and commercial item acquisition (see FAR Part 12).

2. Procurement Sources.

- a. Contracting staff shall comply with all limitations or priorities set forth in the FAR (e.g., Parts 8 and 19) when soliciting sources. When it is determined that required supplies or services are to be procured from the open market, it is the Department's policy to solicit all known qualified sources by publicizing the requirements in accordance with FAR Part 5. All synopses required by FAR Part 5 shall be made via the Federal Business Opportunities (FedBizOpps) system (instructions for using FedBizOpps are available on the OCPO intranet site). Notices of contracting opportunities and solicitations with a value of \$10,000 up to \$25,000 shall also be posted on the Department's internet contracting site. It is the Department's policy that contracting activities not maintain lists of sources. However, Contracting Offices may maintain lists of sources for supplies and services routinely acquired using simplified acquisitions.
- b. The Contracting Officer shall ensure that reasonable steps are taken to facilitate competition (e.g., pro-actively sending solicitations to known sources).
- c. Sources shall not be included or excluded on the basis of race, creed, color, sex, age, disability, national origin, or political affiliation.

3. Contract Period.

- a. Contracts for other than IT requirements are limited to a total period of five years including all options unless the SPE (i.e., CPO) approves a longer period in accordance with HUDAR 2417.204. Contract period means the performance period, or for indefinite-delivery contracts, the ordering period.
- b. Contracts for IT requirements that exceed five years do not require the approval of the SPE when the contract period is consistent with the needs of the estimated IT system life as approved by the Director, OIT and as approved by the CMRB.

- c. The requirement for a non-IT contract period longer than five years shall be identified at the strategic acquisition planning stage (see paragraph 4-1.A). The request and justification for a contract period exceeding five years for a non-IT requirement must be provided to the Contracting Officer during the individual acquisition planning stage (see paragraph 4-1.B). The Contracting Officer will review the request, and if he/she concurs, will forward it to the SPE for approval. If the Contracting Officer does not concur on the request, he/she will return it to the initiating office with his/her reasons and will advise the office as to whether the request may be resubmitted with revisions/corrections. The requesting office may appeal the Contracting Officer's decision to the SPE.
- d. This paragraph 3 shall only be applicable to prospective contracts. The authority provided the SPE at HUDAR 2417.204 may not be used to seek or obtain extensions to the period of an existing contract. Any proposed extension to an existing contract's period must be authorized by an appropriate option clause contained in the contract. Otherwise, the proposed extension must be treated as a new requirement and processed accordingly (*e.g.*, as a new other than full and open competition contract).

- 4. Written Contracts. With the exception of paperless simplified acquisitions executed electronically or orally (*e.g.*, using the Governmentwide commercial purchase card), all HUD contracts and contract actions must be in writing.

B. Procurement Responsibilities and Authority.

- 1. SPE. In accordance with E.O. 12931, the CPO is designated as the Department's SPE. The SPE's responsibilities are as follows:
 - a. Procurement Reforms. The SPE is responsible for establishing Departmental programs to assure implementation of all the reforms identified in E.O. 12931. This includes initiatives to reduce the administrative costs and other burdens that the procurement function imposes on the Federal Government and the private sector. The SPE may delegate the implementation of specific reforms to the DCPO and ACPOs as the SPE deems appropriate.
 - b. Policy Formation. The SPE is responsible for the development and maintenance of all Departmental acquisition regulations, policies, and procedures.

- c. Procurement Standards. The SPE is responsible for implementing Government-wide acquisition performance standards that measure operational effectiveness (*i.e.*, time, cost, quality, accuracy, quantity, and personnel qualifications) and compliance with established acquisition statutes, regulations, policies, and procedures. The SPE also determines the need for, develops, and promulgates standards that are unique to the Department.

- d. Oversight and Evaluation. The SPE is responsible for the oversight and evaluation of all Departmental procurement including the Governmentwide Commercial Credit Card Program. The SPE establishes and maintains a program of evaluation of all procurement activities within the Department against the standards described in B.1.c above. The SPE is also responsible for certifying to the Secretary that the Department's procurement systems meet those standards.

- e. Career Management. In accordance with the Department's published delegation of procurement authority, the SPE is responsible for HUD's Acquisition Career Management Program (ACMP) and for complying with and implementing the government-wide Federal Acquisition Certification (FAC) programs established pursuant to OFPP Policy Letter 05-01, "Developing and Managing the Acquisition Workforce." These programs – "FAC-C" for contracting personnel, "FAC-P/PM" for program and project managers, and "FAC-COTR" for contracting officer's technical representatives – set forth the minimum training and knowledge requirements for all government personnel responsible for and involved with acquisition. The SPE appoints the Department's Acquisition Career Manager (ACM), who is responsible for the ACMP and compliance with the FAC programs. Guidance for HUD's ACMP and the FAC-COTR and FAC-P/PM programs is available at the OCPO intranet site.

- f. Redelegation of Contracting Authority. As set forth in the Department's published delegations and redelegations of procurement authority:
 - (1) The CPO is designated as the Department's Senior Procurement Executive, and has:
 - (a) Designated the Deputy Chief Procurement Officer, the Assistant Chief Procurement Officer for Program Operations, the Assistant Chief Procurement Officer for Support Operations, and

the Assistant Chief Procurement Officer for Field Operations as Contracting Officers.

- (b) Redelegated to the Commercial Credit Card Program Administrator authority for credit card purchases within the micro-purchase threshold established in FAR Part 13. The Commercial Credit Card Program Administrator may further redelegate this authority to qualified headquarters employees.
- (b) Redelegated to the Commercial Credit Card Program Administrator authority for making credit card purchases within the micro-purchase threshold established in FAR Part 13. The Commercial Credit Card Program Administrator may further redelegate the authority to make micro-purchases to qualified headquarters employees. In accordance with the Departmental delegations of procurement authority, the CPO retains oversight authority for all credit card purchase activity and the Commercial Credit Card Program, including the development of relevant policy and the periodic assessment of HUD's credit card program (see paragraph d above).

(2) The CPO may redelegate contracting authority to:

- (a) Qualified Office of the Chief Procurement Officer personnel, by way of Certificates of Appointment as Contracting Officers, to enter into, administer, and/or terminate all procurement contracts, and interagency agreements entered into under the authority of the Economy Act, for property and services required by the Department (including the placement of paid advertisements in newspapers), and make related determination and findings; and
- (b) Qualified Departmental employees, to engage in the following purchasing procedures: simplified acquisitions (FAR Part 13); and issuance of orders under contracts established by other Government sources in accordance with FAR Part 8, or under pre-priced indefinite-delivery contracts established by the Department.

2. Head of the Contracting Activity (HCA). The HCA is the HUD official who has the authority and responsibility for managing the contracting

activity. As defined at FAR 2.101, the contracting activity is “an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.” Within HUD, OCPO is the sole contracting activity. The CPO is designated as the HCA. The CPO may delegate HCA authority for specific actions and responsibilities, as permitted by the FAR and HUDAR, to the Deputy CPO and Assistant CPOs, but no lower.

3. Program Offices. Program offices are responsible for planning and defining their acquisition requirements and for assisting the Contracting Officer in the selection of contractors and the monitoring of contracts and evaluation of contractor performance and contract products and services. Their duties include but are not limited to: preparing strategic acquisition plans; defining their contract requirements (*e.g.*, developing work statements); assisting Contracting Officers in the preparation of individual acquisition plans, independent estimates of contract costs, evaluation factors for contract award and solicitation instructions/special provisions; identifying and reserving appropriate funding for contract actions; obtaining necessary internal clearances; submitting complete, timely requests for contract services to the Contracting Officer; providing for technical evaluation of offers; nominating qualified GTRs and any GTMs; and, monitoring and evaluating contractor performance and deliveries.
4. Government Technical Representative (GTR) and Government Technical Monitor (GTM). Chapter 11 contains the policies and procedures governing GTRs and GTMs.
5. Contracting Officers. Contracting Officers, acting within the scope of their delegated authority, are the exclusive agents of the Department authorized to enter into and administer contracts and interagency agreements for the acquisition of supplies and nonpersonal services (including construction). Contracting Officers have the authority and responsibilities set forth in FAR Subpart 1.6. The Contracting Officer is responsible for any or all actions necessary for effective contracting including solicitation of offers, and negotiation, award, administration, and closeout of contracts. Functions not required to be performed by a Contracting Officer may be delegated to Contract Specialists, GTRs/GTMs, and other Departmental personnel (*e.g.*, ordering officials) as permitted by the FAR, HUDAR, and published Departmental delegations of authority.
6. Ordering Officials. It may be appropriate for Departmental employees other than Contracting Officers to order supplies and services under existing indefinite-delivery type contracts (see FAR Subpart 16.5) and other contractual instruments (*e.g.*, Interagency Agreements, see section 6-

3; blanket purchase agreements, see section 9-10; term level-of-effort contracts using task specifications, see paragraph 6-5.C.2.a).

- a. Contracting Officers may designate individuals to serve as ordering officials for specific HUD contractual instruments. These officials shall be designated in the instrument.
 - (1) Program or other non-contracting staff may serve as ordering officials when:
 - (a) All orders will be issued on a fixed-price basis;
 - (b) The services and/or items for order are pre-priced or the order prices are based on established rates (e.g., labor rates) fixed in the contract or catalog or market rates (e.g., print media advertising copy);
 - (c) Funds have been obligated under the contract sufficient to cover the amount of the order; and,
 - (d) All other terms are specified in the contract, *i.e.*, not negotiated for individual orders.
 - (2) Where the terms of the contract provide for, or require, negotiation of the price and/or other terms of orders, only individuals with a current and sufficient delegation of procurement authority may serve as ordering officials.
- b. Ordering officials who do not also have a delegation of procurement authority may not take any other actions with regard to the administration of a contract or other instrument, or in any other way obligate the Government, without prior authorization from the Contracting Officer.
- c. The ordering authority of an individual who also has delegated contracting authority may be included in the individual's written delegation.
- d. When the GTR or GTM is authorized to issue orders or task specifications under a contract, the appointment memorandum (see paragraph 11-3.D) shall include this authority.

7. The Office of General Counsel (OGC).

- a. The OGC is responsible for providing legal advice on all matters pertaining to contracts and the procurement process. Areas of

responsibility include, but are not limited to: acquisition strategy; source evaluation and selection documentation; unique solicitation and contract terms and conditions; protests of award; alternative dispute resolution; Contracting Officer final decisions; claims and disputes under contracts; and litigation.

- b. The Ethics Law Division (ELD) within OGC is responsible for developing, operating, and monitoring a Department-wide ethics program. In the field, the Assistant General Counsels are designated as Agency Ethics Officials and perform many of the functions of the ELD. Specific areas of responsibility include but are not limited to:
- (1) Providing counseling and training in ethics to Departmental staff;
 - (2) Conducting annual ethics training including the prohibitions against participating in matters which employees have financial interests;
 - (3) Collecting and maintaining a central repository for the following public and private disclosure forms:
 - (a) Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report, form HUD-450-A, Supplement to OGE Form 450, or other financial disclosure certifications submitted by TEP members, GTRs, and procurement personnel (see paragraph 1-5.C);
 - (b) Standard Form (SF) 278, Public Financial Disclosure Report, filed by Presidential appointees confirmed by the Senate, Senior Executive Service (SES) and Schedule C employees involved in the procurement process (see paragraph 1-5.C); and,
 - (c) OMB standard Form (SF) LLL, Disclosure of Lobbying Activities, filed by offerors and contractors under contracts that exceed \$100,000. Specific guidance on the use of the SF-LLL is contained in FAR Subpart 3.8. (Note: Only disclosures of lobbying activities are to be sent to OGC/ELD. The certification required by FAR 52.203-11 shall be maintained in the contract file.); and,

- (4) Reviewing and evaluating the disclosures in (3)(a) and (b) above.

8. The Office of Small and Disadvantaged Business Utilization (OSDBU). The OSDBU is responsible for implementing and administering programs under Sections 8 and 15 of the Small Business Act and for overseeing the Department's socioeconomic procurement programs (see also Chapter 3).
9. The Office of the Chief Financial Officer (CFO). The CFO is responsible for the establishment and maintenance of records and accounts necessary to show the current status of allotments issued to each Assistant Secretary. All proposed contracts and other actions leading to the commitment and obligation of HUD funds must be validated to provide assurance that funds are available for the proposed obligation as required by 31 U.S.C. 665. OCFO's Accounting Center in Fort Worth Texas is responsible for establishing and maintaining official contract obligation and payment files and processing payments under contracts other than the following:
- a. Contracts supporting the Office of Housing's REO program (e.g., Property Management contracts);
 - b. Contract payments made by the Office of Housing's Cash Management and Investment Staff within the Office of Housing-FHA Comptroller;
 - c. Contract payments made by letter of credit;
 - d. Payments made under GNMA contracts; and,
 - e. Contract payments made on a basis other than submission of an invoice or voucher.

C. Selection and Appointment of Contracting Officers, and Delegations of Authority.

1. Contracting Officers. The CPO, acting within his/her authority as the HCA, shall select and appoint Contracting Officers – other than the officials listed in paragraph B.1.f – in accordance with FAR Subpart 1.6 and HUDAR Subpart 2401.6.
2. Revocation of Contracting Authority. The CPO may revoke contracting authority for consistent failure of the Contracting Officer to adhere to sound procurement practices. Depending upon the severity of the Contracting Officer's failures, the CPO may elect to reduce a Contracting Officer's authority by revoking the existing Certificate of Appointment and issuing a new one reflecting the reduced authority.

3. Governmentwide Commercial Purchase Card. In accordance with the Department's published redelegations of procurement authority, the Commercial Purchase Card Program Administrator may redelegate purchasing authority up to the micro-purchase limit (see section 9-9) to qualified Departmental personnel who are cardholders (see also paragraph B.1.f).
- D. Award to Responsible Contractors. FAR Subpart 9.1 contains specific guidance on determining contractor responsibility (see also paragraph 5-8.B).
1. Information on Debarred and Suspended Offerors and Bidders. Contracting Officers shall consult the GSA's web-based "Excluded Parties List System" and HUD's list of Limited Denial of Participation (LDP) before making awards. The lists are accessible via the on the OCPO intranet site. The EPLS can be directly accessed at:

<http://epls.gov>
 2. Debarred and Suspended Contractors. FAR Subpart 9.4 contains the policy and specific guidance on the suspension and debarment of contractors. HUD's regulations on debarment and suspension are contained 2 CFR 2424. Under the published Department delegations of procurement authority, the CPO is authorized to order the debarment or suspension of contractors. The Department's debarment and suspension official is the Director of the Compliance Division within the Office of General Counsel's Departmental Enforcement Center. Contracting staff and management shall make any referrals for debarment or suspension via the CPO to the suspension and debarment official and shall provide all relevant factual information requested during any sanction process relative to a HUD contractor.
 3. Limited Denial of Participation (LDP). These sanctions are used for the purpose of protecting the Government's interest and are limited in effect to HUD programs. HUD's regulations on this subject are contained in 2 CFR Part 2424. As stated at 2 CFR 2424.1100, "A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and based on the best interests of the federal government." In accordance with HUD's published delegations of procurement authority, the CPO may impose LDPs on contractors in accordance with 2 CFR 2424.1110.
- E. Review of Contract Actions and Data Reporting.

1. The following contract actions shall require reviews at the levels specified in paragraph 2:
 - a. New contracts (NOTE: For indefinite-quantity contracts, the maximum quantity value shall determine the approval level);
 - b. Interagency acquisitions;
 - c. Delivery and task orders issued under HUD indefinite-delivery contracts;
 - d. Unpriced task orders resulting from indefinite-quantity contract task order competitions;
 - e. Orders issued against GSA multiple award schedule contracts for technical and professional services;
 - f. Solicitations for any of the actions listed in a through e above;
 - g. Modifications that:
 - (1) Add new work (see also paragraph 6 below);
 - (2) Definitize new work; or
 - (3) Make cumulative changes, plus or minus, to the contract's value that reach a threshold in paragraph 3 (*e.g.*, a supplemental agreement resulting from change order that increases part of a contract by \$6 million and reduces other parts by \$4 million); and
 - h. Terminations.
2. Reviews of the actions described in 1.a through 1.g shall be obtained at the following levels:
 - a. For actions up to \$3.5 million, the Contracting Officer;
 - b. For actions from \$3.5 million up to \$10 million, one level above the Contracting Officer (*e.g.*, Branch Chief or Division Director/Field Contracting Operations Director);
 - c. For actions from \$10 million up to \$50 million, the responsible ACPO; and
 - d. For actions from \$50 million up, the DCPO.

3. The Contracting Officer shall review all actions subject to higher level review to ensure its accuracy and completeness. Each official above the Contracting Officer but below the responsible reviewing official may review actions at his/her discretion. Nothing prevents any higher level official from reviewing any solicitation or proposed action at his/her discretion. In the exceptional case where the reviewing official is also acting as the Contracting Officer responsible for executing the action, he/she should obtain a review at either one level above him/her, or if that is not practicable, a peer review. Contract Specialists and Contracting Officers may obtain peer reviews of any action prior to its submission for higher level review.
4. Proposed actions and all supporting documentation shall be provided to the reviewing official through the Contracting Officer's chain of command. A model format for requesting reviews is posted on the OCPO intranet site.
5. The reviews required by this paragraph E do not relieve the Contracting Officer of his/her responsibility to obtain all other required or applicable internal (*e.g.*, legal reviews consistent with FAR and HUDAR; see OCPO Acquisition Instruction 08-2) and external (*e.g.*, Office of Federal Contracts Compliance Programs, Department of Labor) reviews, approvals and clearances (see section 4-4).
6. The requirements of this paragraph E shall not be applicable to the approval of any Justification for Other than Full and Open Competition ("JOFOC," form HUD-24012) required by FAR 6.304 (see also paragraph 4-6.B.2) or of any Limited Source Justification for Federal Supply Schedule Orders (form HUD 24013) required by FAR 8.405-6 (see also OCPO Acquisition Instruction 09-2). Contracting officers shall obtain approvals of JOFOCs as specified at FAR 6.304 and approvals of Limited Source Justifications as specified at FAR 8.405-6.
7. To ensure the accuracy of data reported to FPDS-NG, all contract action data reports submitted to FPDS-NG (whether input via HPS/SPS or directly to FPDS-NG) for contract actions exceeding the micro-purchase threshold shall be reviewed at one level above the individual (*e.g.*, Contract Specialist) who input the FPDS-NG contract action report. (NOTE: "Contract action report" means the contract action data required to be entered into FPDS; see paragraph F).

F. Contract Action Data Reporting.

1. General. FAR Subpart 4.6 requires Contracting Officers to report contract action data to the Federal Procurement Data System-Next Generation (FPDS-NG).
2. Reporting Requirements. HUD fulfills the FPDS reporting requirements by recording procurement actions in HPS and SPS. Each system collects and validates data in accordance with FPDS requirements (see also paragraph E.7).
 - a. Actions Reported in SPS. The following actions shall be reported by recording the action in SPS and validating the FPDS screens in SPS:
 - (1) Simplified acquisitions above the micro-purchase threshold conducted pursuant to FAR Part 13 (including commercial acquisitions made pursuant to Subpart 13.5, regardless of dollar value), *except* purchases made using the Governmentwide Commercial Purchase Card (see paragraph 9-9.A);
 - (2) Acquisitions of supplies made under the authority of FAR Subpart 8.4, Federal Supply Schedules;
 - (3) Acquisitions of services with a value of \$100,000 or less made under the authority of FAR Subpart 8.4, Federal Supply Schedules;
 - (4) Acquisitions made under the authority of FAR Subpart 8.6, Federal Prison Industries, Inc.; and,
 - (5) Acquisitions made under the authority of FAR Subpart 8.7 Nonprofit agencies employing the Blind or Other Severely Disabled.
 - b. Actions Reported in HPS. All other contract actions, including IAAs shall be reported by recording the contract action in HPS and validating the FPDS screen in HPS.
3. Responsibility for Reporting.
 - a. Contract specialists are normally responsible for reporting contract actions in HPS/SPS and FPDS-NG. In cases where a Contracting Officer acts as the Contract Specialist (e.g., prepares contract documents for execution by a higher level Contracting Officer), he/she may be responsible for entering data into HPS/FPDS-NG.

- b. Actions shall be reported within the time periods specified at FAR 4.604(b)(3) and (b)(4).
- c. FAR 4.6 and the FPDS-NG Government User's Manual, and the HPS Manual identify detailed reporting requirements. Contract Specialists/Contracting Officers are responsible, in accordance with FAR 4.602(d), for obtaining Data Universal Numbering System (DUNS) numbers from successful offerors for creation of vendor records in HPS and SPS. The HPS Manual is accessible via the OCPO intranet site. The FPDS-NG Government User's Manual may be found online at:

www.fpds.gov

- 4. Filing Data Reports. Contract Specialists/Contracting Officers shall print hard copies of the HPS/SPS contract action award record and the FPDS-NG contract action report and place them in the contract file.
- 5. Individuals reporting data to HPS, SPS, and FPDS-NG shall be responsible for its accuracy. All HPS, SPS, and FPDS-NG data reports shall be reviewed for accuracy as required in paragraph E.7.
- 6. Subcontracting Data Reporting. Contracting Officers and Contract Specialists shall ensure that:
 - a. The subcontract reporting requirements of FAR Subpart 19.7 are met; and,
 - b. That contractors who are required to do so have submitted Individual Subcontract Report (ISRs), and Summary Subcontract Reports (SSRs) using the Electronic Subcontracting Reporting System (eSRS). User instructions are available at the eSRS web site at:

www.esrs.gov
 - c. Additional guidance on small business subcontracting plan submission and review is provided in paragraph 3-3D.

G. Contracting with Government Employees. In accordance with FAR Subpart 3.6, Contracting Officers shall not knowingly enter into prime contracts or consent to subcontracts with:

- 1. Government employees. This prohibition also applies to organizations substantially owned or controlled by Government employees. The only exception to this policy is if the Department's needs cannot be otherwise

reasonably satisfied. Such contracts require the advance approval of the Senior Procurement Executive (see also HUDAR Subpart 2403.6).

2. Former Government employees who are prohibited from receiving Government contracts in general or the specific contract to be awarded (*e.g.*, employees who were procurement officials for the contract in question; see paragraph 1-5.B).
- H. Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (“PRA”). Under the PRA, a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection has been approved by the Office of Management and Budget (OMB). In addition, any reporting or recordkeeping requirements imposed upon contractors must have received OMB approval. Contracting Officers shall review all information collection requirements associated with solicitations, contract awards, and modifications to ensure that OMB approval has been obtained. The Contracting Officer’s signature on the solicitation or contractual document shall serve as his/her certification that such a review was conducted. Contracting Personnel should obtain advice from the Reports Management Officer located within OCIO’s Office of Investment Strategies.
- I. Contracting Records. All official contracting records shall be maintained in accordance with FAR Part 4 and any additional instructions issued by the CPO. Contracting records shall be retired to the appropriate Federal Archives center serving the contracting office’s geographic area in accordance with Departmental guidance for records retention.
- J. Ratification of Unauthorized Commitments.
1. Authority to Obligate the Government. All procurement obligations must be made by authorized Contracting Officers acting within their delegated contracting authority. In accordance with FAR 1.602-3 and HUDAR 2401.602-3, an authorized Contracting Officer must ratify a commitment made by an unauthorized person that results in an obligation on the behalf of the Department to pay for supplies or services, before payment for such commitment can be made. Furthermore, each unauthorized commitment must be met with appropriate corrective and, if proper, disciplinary measures to ensure that future unauthorized commitments are not made. The HCA must approve all ratifications. The HCA may delegate the authority to approve ratifications to the Deputy CPO.
 2. Policy.
 - a. While the FAR and HUDAR both permit the ratification of unauthorized commitments, neither sanctions the use of ratification as an acceptable acquisition strategy. Therefore, in accordance with FAR 1.602-3(b)(1), it is HUD policy that ratifications may

not be used in a manner that encourages the making of unauthorized commitments by HUD personnel and are strongly discouraged.

- b. In accordance with HUDAR 2401.602-3(b)(1), the office with oversight of the individual who created an unauthorized commitment must request a ratification in writing, and provide the required supporting documentation.

3. Processing Ratifications.

- a. All ratifications shall be requested and approved using the form HUD-24013, Request for Ratification of Unauthorized Commitment.
- b. Requests for ratification shall include all the information required by HUDAR 2401.602-3. To facilitate requesting ratifications and to ensure standardization in OCPO's contract documentation of ratifications, all requests for, and approvals of, ratifications shall be made using the model template accessible on the OCPO intranet site.
- c. Contracting Officers shall provide the request template to the program office requesting ratification promptly after the program office notifies the contracting officer of the unauthorized commitment. The program office will complete its portion of the request template and return it to the contracting officer.
- d. The contracting officer shall provide to legal counsel for review: all requests for ratification that exceed \$100,000 (see HUDAR 2401.602-3(c)(5)); and all requests for ratification of IAAs, regardless of dollar amount, and the proposed IAA document. Counsel will indicate concurrence or nonconcurrence (and provide comments), sign the template, and return it to the contracting officer. The Contracting Officer may seek the advice of counsel in the resolution of any ratification, specifically with regard to the legality and completeness of the ratification, the appropriateness of the expenditure and the funding source, and the release of claims.
- e. If the contracting officer agrees with a legal recommendation to approve or disapprove a requested ratification, the contracting officer will indicate his/her concurrence or nonconcurrence on the template, and sign and date it.
- f. If the contracting officer determines that the ratification should be approved, notwithstanding legal advice to the contrary, he/she

must provide the basis for his/her decision on the template. The contracting officer must also ensure that all requirements and determinations required by FAR 1.602-3(c) (including the determination of price reasonableness) are met, indicate his/her recommendation on the request, and sign and date it.

- g. In the case of an IAA, if the contracting officer determines that ratification should be made, the contracting officer shall prepare the determination and findings required by FAR 17.503 and attach it to the ratification request.
- h. Once the contracting officer has completed his/her portion of the request, he/she shall provide it to the Deputy CPO. The Deputy CPO will indicate approval or disapproval and sign and date the request.
- i. After the Deputy CPO has approved the ratification, the responsible contracting officer will prepare and execute the ratifying action (e.g., contract or IAA), unless the value of the action exceeds his/her warrant. In such case, the action will be executed by a higher-level contracting officer.

4. Non-ratifiable Commitments. The creation of an unauthorized commitment does not guarantee that the obligation will be ratified.

- a. The following types of unauthorized commitments shall not be ratified:
 - (1) Commitments for supplies or services that are determined to not be necessary;
 - (2) Commitments that would be otherwise invalid, inappropriate, or unenforceable (e.g., illegal actions or supplies or services that do not fall within the scope of a contract); and,
 - (3) Commitments that create a monetary obligation for which there is insufficient funding. Such commitments may not be ratified if funds are not available from the time the commitment is made until it is to be ratified (see also FAR 1.602-3).
- b. If the ratification of an unauthorized commitment is disapproved, the Contracting Officer shall promptly notify the individual who made the unauthorized commitment and the program office official who signed the request, in writing, stating the reasons for

disapproval and recommending that the individual obtain legal advice. The Contracting Officer shall also advise the program office official and the individual that the nonratifiable commitment will not be paid in accordance with prescribed contracting methods of payment.

- c. If a non-ratified unauthorized commitment was made using the Governmentwide Commercial Purchase Card, or if payment has already been made, the individual responsible for the unauthorized commitment may be billed or other reimbursement action taken.
- d. Each unauthorized commitment must be met with appropriate corrective and, if proper, disciplinary measures to ensure that future unauthorized commitments are not made.
- e. If the Contracting Officer has reason to believe that an unauthorized commitment was made fraudulently (*e.g.*, not through lack of understanding of one's authority), the Contracting Officer shall refer the matter promptly through the responsible Assistant CPO and the CPO to the Office of the Inspector General for Investigation.

5. Ratification of Interagency Agreements. In addition to contracts and simplified acquisitions, HUD may obtain supplies or services from other Federal agencies via interagency agreements (IAAs). Like contracts, IAAs are expected to be planned, requested, and executed in accordance with FAR Part 7, FAR Subpart 17.5, and section 6-3 and paragraph 4-2 B.3 of this handbook. IAAs, which should have been executed by an OCPO Contracting Officer are sometimes initiated by program offices before they are properly executed by the Contracting Officer. In some cases, supplies or services may have been received before the IAA is formally executed. Such IAAs must be ratified following the process specified in paragraph 3.

1-5 ETHICS IN PROCUREMENT.

- A. Standards of Conduct. All HUD employees, including contracting, technical, and program personnel involved with HUD procurement, must comply with the government-wide standards of ethical conduct rules published at 5 CFR Part 2635 and the HUD supplemental rules published at 5 CFR Part 7501. These rules seek to assure high standards of honesty, integrity, impartiality, and conduct on the part of all Government employees.
- B. Procurement Integrity. Section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), which is implemented at FAR Part 3, imposes restrictions on personnel who participate "personally and substantially" (see FAR

3.104 for further definition) in the procurement process. All such HUD personnel shall comply with the applicable Procurement Integrity requirements.

1. Personal and Substantial Participation. Within HUD, the following individuals normally will be deemed to have participated personally and substantially in procurements:
 - a. Contracting Officers and Contract Specialists;
 - b. GTRs and GTMs;
 - c. Technical Evaluation Panel members (including committees, advisors, and external consultants);
 - d. SSAs (possibly including POHs and other principal staff members);
 - e. The HCA (see paragraph 1-4.B.2); and,
 - f. Departmental or other Federal employees, consultants, and contractors who develop, or assist in developing, contract specifications, SOWs, technical evaluation plans, solicitation provisions, or contract clauses.
2. Reporting Offers of Employment. Individuals shall report any contact made with (either to or from) offerors concerning offers of employment to their supervisors and to the cognizant Agency Ethics Official and take appropriate actions (e.g., rejecting the offer of employment, disqualifying themselves from further participation in the procurement, etc.) as required by FAR Part 3.

C. Financial Disclosure.

1. Because of their ability to influence actions that can have an economic impact on non-Federal enterprises, individuals involved in the procurement process (e.g., contracting personnel, GTRs, GTMs, and individuals serving on TEPs) (see also paragraph 5-6.B) are required to disclose their financial interests.
2. Disclosure is made on one of the following forms:
 - a. SF-278, "Public Financial Disclosure Report," filed by Presidential Appointees confirmed by the Senate, SES, and Schedule C employees involved in the procurement process.

- b. OGE Form 450, “Confidential Financial Disclosure Report,” and the supplemental form HUD-450A, filed by other employees.

- D. Financial Conflict of Interest. Individuals serving on TEPs - except for contracting or legal personnel acting in an advisory capacity - must complete the “Financial Conflict of Interest Certification for Technical Evaluation Panel Members” (see paragraph 5-6.B.1.b).

- E. Organizational Conflicts of Interest. An organizational conflict of interest is a situation in which the nature of the work under a proposed Government contract and a prospective contractor’s (including any employee, subcontractor, or team member of that contractor) organizational, financial, contractual, or other interests are such that award of the contract may result in an unfair competitive advantage, or the contractor’s objectivity in performing the contract work may be impaired. HUDAR Subpart 2409.5 contains the Department’s policies and procedures governing organizational conflicts of interest.

- F. Nondisclosure of Information. No information provided to evaluators for new awards or competitive orders may be disclosed outside HUD or to any individual without a need to know unless the Contracting Officer has given prior permission to do so. Persons with a need to know generally include the evaluation panel or other group assembled to assist the Contracting Officer in assessing offers, the GTR, GTM(s) and the Contracting personnel directly involved in the contract action. Supervisors and managers of technical personnel are not automatically deemed to have a need to know (see also paragraph 5-5.B).