

CHAPTER 3. CONTRACT MONITORING, ADMINISTRATION, AND ENFORCEMENT

3-1. PROMPT MONITORING - of contract performance is essential to ensure compliance with contract requirements and performance/delivery schedules (FAR Part 42).

3-2. MONITORING TOOLS

A. Inspections. Inspections shall be performed as needed to protect HUD's interests, ensure overall quality of contract services, and as required by Handbooks 4310.5 and 4315.1.

1. General. Inspections are needed to:
 - a. Ensure that performance begins on the date agreed;
 - b. Ensure progress towards timely completion;
 - c. Ensure compliance with contract requirements;
 - d. Support contractor's request for partial and final payments;
 - e. Document labor enforcement requirements, as set forth in Handbook 1344.1;
 - f. Document correction of noted deficiencies;
 - g. Document contractor delays or other performance failures to preclude inadvertent waiver of delivery or performance schedules; and,
 - h. Ensure compliance with inspection deadlines stated in the contract, as required by the Prompt Payment Act.
2. The person making an inspection must carry a copy of the specifications against which to check the work performed.
3. Inspections of work/repairs performed on a property must be documented on Form HUD-9519, Inspection Report, with distribution as noted on the form.

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4. Inspection services may be acquired under a HUD-issued purchase order or formal contract. Inspection reports complete by a contractor must be reviewed and approved by the Government Technical Representative (Realty Specialist, see paragraph 3-4) prior to processing any payments due.

- B. Performance Record Files. Maintain a file for each active contractor on the Solicitation Mailing List for procurements over the small purchase ceiling. Performance record files are optional for contracts under the small purchase ceiling; however, it is recommended that negative comments on performance be included.
 - 1. A log of all contract awards shall be kept on the left side of the Performance Record File. (See Appendix 4 for format).
 - 2. Performance Record File Contents:
 - a. Solicitation mailing list application;
 - b. Credit reports and credit rating response to reference check;
 - c. Correspondence having a bearing on performance, bonding, labor complaints, equal opportunity, delays, time extensions, adverse inspections, terminations, etc; and,
 - d. Amendments involving unanticipated work due to theft or vandalism.
- C. Multifamily Project Management System (PMS) - Provides various reports on project expenditures and expenses which can be used to monitor PM activity.
- D. Single Family Management Information and Accounting System-Reserved

3-3. PURCHASE ORDERS - Refer to FAR Part 13. Prompt follow-up on completion dates is essential.

- A. The back of the Form HUD-2542 includes a requirement for the contractor to notify the Contracting Officer five days before work is ready for inspection, and requires inspection of services or repairs within five days of this notice.

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- B. Delays must be determined excusable or inexcusable based on the Default clause on the back of Form HUD-2542. If delay is excusable, the Contracting Officer must prepare a modification to extend the completion date.
 - C. The clauses incorporated on the Form HUD-2542 provide for inspection by the Government before acceptance and payment.
 - D. Each Form HUD-2542 signed by the AMB/PM certifying

acceptance of the work must be accompanied by a completed Form HUD-9519, Inspection Report.

- E. Any modification required must be within the scope of the work and the existing contractor capable of performance without delay.
1. Purchase orders must be modified by issuing a new Form HUD-2542. Insert the original purchase order number in block 8 of the Form HUD-2542 followed by the modification number, e.g., 88-333-M1 (M1 means modification number one). Each modification must be numbered consecutively.
 2. Each modified Form HUD-2542 must show the original total price, the adjustment (plus or minus) and the new total price, and any change in the time for completion. The file must be documented to show the basis for determining the price change is fair and reasonable.
 3. Note the modification in the purchase order log.
 4. The original and the modified purchase orders must be received prior to certifying and forwarding for payment. The original purchase order must be retained in the local office.
- F. Cancellations - See FAR 13.504. Cancellations must be issued in the same manner as a modification. Type across the face of the Form HUD-2542; "The above numbered purchase order is cancelled in its entirety because (a brief statement of reasons for the cancellation)." This cancelled Form HUD-2542 must be retained in the property case file and noted in the purchase order log accordingly.
- 3-4. GOVERNMENT TECHNICAL REPRESENTATIVE (GTR) - At the time of award of a contract in excess of the small purchase ceiling the Contracting Officer should designate a GTR based on the CPO's request. Designation of the GTR is formally made by insertion of the "Conduct

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of Work" clause (HUDAR 2452.237-73) into the contract. For AMB/PM contracts, the GTR usually will be a Realty Specialist. GTRs must be informed of their responsibilities for monitoring and timely inspection of all phases of the contractor's performance. The GTR must immediately schedule dates for conducting inspections to assure that:

- o Work begins timely;
- o Work progresses sufficiently to assure timely completion and compliance with contract requirements;

- o Work is completed by the date stated in the contract;
and,
- o Requests or payments are justified and appropriate.

Guidance on GTR duties and responsibilities is contained in the Desk Guide for Government Technical Representatives on Property Disposition Contracts. Copies are available from the Management Branch, Multifamily Property Disposition Division.

3-5. PROPERTY MANAGEMENT CONTRACTS

- A. Review of Payment Requests. In addition to the review requirements set forth in Handbooks 4305.3 and 4310.5 and the PMS Manual, AMB/PM requests for monthly management fees and expenses must be reviewed to ensure:
 - 1. Valid expenditures;
 - 2. Compliance with AMB/PM purchasing authority limits;
 - 3. Compliance with AMB/PM contract payment terms;
 - 4. Correction from prior submissions; and,
 - 4. The absence of redundant payments.
- B. On-Site Evaluations of AMB/PM operations must be conducted as necessary to ensure performance meets the objectives of the property disposition program. See Handbooks 4310.5 and 4315.1.
- C. Promptly following award, conduct post-award orientation with all new AMBs/PMs.
- D. Consider holding "progress management meetings" covering procedures, expenditures, problems, and needs of the project as frequently as required/practicable to ensure good performance.

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- E. AMB/PM Purchases
 - 1. AMB/PM contracts authorize the contractor to enter into purchase orders on HUD's behalf as necessary to meet property management needs. Delegated purchasing authority limits are established by Headquarters Single Family and Multifamily Property Disposition Divisions.
 - 2. Field Offices may establish AMB/PM purchase authority limits less than the maximum established by Headquarters to reflect changing needs, expertise of

the property manager, or to curb abuses noted. The actual purchasing authority must be specified in the AMB/PM contract.

3. AMB/PMs must establish adequate sources for repetitive purchases. Such purchases must be equitably distributed among qualified suppliers to ensure fairness of prices and avoid overreliance on any particular source.
4. Except for emergency situations described in paragraph 4 below, AMBs/PMs must call the Field Office for prior approval of purchases above the limit set in their contract. The Field Office must provide a purchase order number and authorizing signature before issuance of the order, performance of the work, and processing for payment.
5. When emergency repairs are needed during hours HUD is not open for business and the cost of such repairs is estimated to exceed the AMB/PM's purchasing limit, the AMB/PM must order the needed repairs and notify the GTR the next business day. The GTR must take appropriate action to retroactively authorize the purchase(s). The GTR must consider whether the contractor's actions were necessary and reasonable.

The AMB/PM must establish procedures to ensure that such emergency, after-hour repairs are handled promptly and cost-effectively. If valid emergencies are a frequent occurrence, the Field Office should establish indefinite delivery purchase orders and/or contracts to meet these needs and minimize paperwork.

3-6. SERVICE/SUPPLY CONTRACTS

- A. Considerations for Scheduling Inspections. Scheduling of inspections can depend on a number of factors:

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1. Type of work;
 2. Complexity of work;
 3. Type of contract;
 4. Dollar amount of contract;
 5. Time frame; and,
 6. Familiarity with the contractor.
- B. Supply Contracts generally require inspection only upon delivery of the required items.

- C. Service Contracts require inspection at regular intervals to ensure quality performance.
 - 1. Requests for payment (vouchers) must be supported by inspection reports.
 - 2. Vouchers/invoices must be reviewed to ensure all charges are in accordance with the contract requirements.
 - 3. If multiple payments are required, a record of payments must be fixed in the contract file folder. See Appendix 5 for a format of a payment record log. See paragraph 3-9 for payment processing requirements.
- D. Any required warranties must be submitted with the request for final payment. Warranties must be filed in the appropriate property file and the contract file. (See FAR Subpart 46.7).

3-7. CONSTRUCTION CONTRACTS - are contracts for property repair or rehabilitation. Administrative controls/considerations include:

- A. Preconstruction Conferences. While discretionary, they are recommended if:
 - 1. Awarding a contract over \$25,000;
 - 2. Liquidated damages are included;
 - 3. Brand-name-or-equal provisions are included;
 - 4. Cost-reimbursement provisions are included; and,
 - 5. Contractor is new to the program.

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- B. Conferences should include review of all significant contract terms and conditions, including:
 - 1. Labor standards provisions;
 - 2. Weekly payrolls and payroll certifications;
 - 3. Subcontract agreements;
 - 4. Government rights and remedies if non-compliance occurs;
 - 5. Bonding requirements;
 - 6. Delivery and completion requirements;

7. Contractor's responsibility for supervising work;
 8. Notification requirement if delays occur;
 9. Modification procedures;
 10. Inspection and payment procedures; and,
 11. Warranties.
- C. Labor Standards must be administered following Handbook 1344.1, REV 1, Federal Labor Standards in Housing and Community Development programs.
- D. Warranty of Construction - The clause prescribed by FAR 52.246.21 must be included in all PD construction contracts awarded on a fixed-price basis.
1. Before processing any post-closing complaint it must be checked against the contract to see if the work is covered by the warranty.
 2. If the contractor fails to correct the defect under the warranty clause and the correction has to be performed by another contractor, the Contracting Officer will, in consultation with local office counsel, take appropriate remedies against the contractor. Such remedies may include: a reduction in the contract price to cover the costs borne by HUD to correct the defect; appropriate debt-collection activities; and, any other remedies specified in the contract.

E. Mechanic/Materialmen Liens

1. Small purchases are generally not supported by performance or payment bonds. It is therefore imperative to advise the contractor that:
 - a. He/she has a duty to protect HUD against liens;
 - b. He/she must obtain release of the lien;
 - c. HUD will withhold payment to offset the amount of the lien until such time as the lien is removed; and,
 - d. The placement of a lien may effect his/her responsibility and therefore his/her eligibility to receive future awards.
2. Construction Contracts over \$25,000 must be supported by a performance and payment bond. If a

lien should arise during performance:

- a. The claimant must be advised of the name and address of the surety issuing the bond;
 - b. The surety must be notified to take action under the bond to remove the lien; and,
 - c. The contractor must be advised of the same conditions cited in paragraph 3-7 E. 1 above.
- F. Construction Contract Payments - Requests for payment under construction contracts exceeding \$500 must be supported by an inspection report. Requests for payment under construction contracts exceeding \$2,000 must be supported by an inspection report and payroll data.

3-8 CONTRACT MODIFICATIONS (FAR Part 43)

- A. General. During the life of a contract, it may become necessary to alter the terms of the contract to incorporate new requirements or handle problems that develop after contract award. When that is the case, HUD must prepare and issue a formal contract modification. In most instances, there must be "consideration" for the modification in the form of a price change, alteration of the delivery date, or other adjustment to the contract.

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1. Contract modifications are any written alterations in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provisions of an existing contract.
 2. Generally, modifications must be within the scope of work of the existing contract. Modifications must not be used to avoid the requirements to synopsise in the CBD nor the requirement for full and open competition (FAR Parts 5 and 6).
 3. All contract modifications must be issued using Standard Form 30 and be numbered sequentially starting with "1."
 4. Only persons who have been delegated contracting authority may modify a contract on HUD's behalf. Other personnel shall not:
 - a. Execute contract modifications;
 - b. Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or,
 - c. Direct or encourage the contractor to perform work

that should be the subject of a contract modification.

5. There are two general categories of modifications:
 - a. Unilateral Modifications: Those issued and signed by the Contracting Officer. Unilateral modifications are binding on the contractor.
 - b. Bilateral Modifications: Those established by mutual agreement and signed by both the contractor and Contracting Officer.

B. Types of Contract Modifications

1. Unilateral Modifications

- a. Administrative Change. An administrative change alters only administrative details which do not affect the substantive requirements and provisions of the contract - for example, the correction of a typographical mistake. It is Government policy that

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all changes to a contract, whether or not the rights and obligations of the parties are affected, be communicated in writing to the contractor by the Contracting Officer or other duly authorized person.

b. Change Order

- (1) A change order is a written modification which directs the contractor to make a change that is permitted under the "Changes" clause of the contract. (See FAR 52.243.1 Alternate I for the Changes clause for fixed-price contracts for services.) Generally, Government contracts contain such a clause, enabling an agency unilaterally to make changes, within the general scope of the contract, in any one of the following:
 - o Drawings, designs, or specifications;
 - o Method of shipment or packing; and,
 - o Place of inspection, delivery, or acceptance.
- (2) When the change order is issued, the contractor is obligated to proceed with the work as specified by the change order. If there is an increase in the price/cost of the work or the time for performance, the contractor must submit a claim for an equitable adjustment within 30 days from receipt of the change order. If the cost of the work is decreased, HUD has

a right to an equitable downward adjustment in the contract price. Equitable adjustments are reflected in a subsequent bilateral modification. Disagreement in the content of the change order and the equitable adjustment are subject to settlement under the "Disputes" cause (FAR 52.233-1).

- (3) To the extent possible, changes authorized by the Changes clause should be negotiated in advance, include any price or other impact on the contract, and be issued as a bilateral modification. (See 2. below). This will minimize after-the-fact negotiations and the potential for disputes.

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- (4) Problems may arise because it is not always clear as to what exactly is the "general scope of the contract" or what actions are within the coverage of a changes clause. The Contracting Officer must make a determination, in light of all the facts of a given case, as to whether a proposed alteration is new procurement, a termination, or a change.
2. Bilateral Modifications (supplemental agreements) are contract modifications that are signed by both the contractor and HUD. They are used to:
 - a. Make negotiated equitable adjustments resulting from the issuance of a change order;
 - b. Extend the period of performance or delivery schedule; and,
 - c. Reflect other agreements of the parties modifying the terms of contracts.

3-9. PAYMENT REQUIREMENTS

- A. Policies - The Prompt Payment Act as further implemented in OMB Circular No. A-125 (Prompt Payment) requires that:
 1. Bills be paid on time;
 2. When payments from the Government to the contractor are late, interest penalties will be paid; and,
 3. Discounts be taken only when payments are made within discount period offered by the contractor.
- B. AMB Bank Account Payments. The Prompt Payment Act does not apply to payments made by an AMB from his/her bank account.

The Act applies to all other payments under purchase orders or contracts.

- C. Single Family Payment Processing Log - must be maintained to assure that the time elements are noted for each step of the process in order that delays can be identified and corrected.

- 1. Log Contents.

- a. Date of notification of completion/delivery;
- b. Date of receipt of proper invoice;

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- c. Contractor name;
 - d. Contract, purchase order or voucher number;
 - e. Dollar amount of payment;
 - f. Payment due date;
 - g. Date sent to OFA/paying agent; and,
 - h. Payment number - nine digits as follows:

Region	Office	Projective Code	Sequential Number
X		XXX	XXXXX

The Property Disposition Branch has been assigned sequential control numbers between 10,000 and 29,999. Numbering starts over at 10,000 at the beginning of each fiscal year. This assignment of numbers permits OFA to track payment penalties by office.

- 2. A copy of each Form SF-1034 not supported by a contract or purchase order must be maintained in a monitoring file.
- 3. The CPO must review the payment log and Form SF-1034 monitoring file monthly to ensure:
 - a. Procurement and payment procedures are consistent, proper, and timely; and,
 - b. Payments are not duplicated.

- D. Vouchers

- 1. Processing. All vouchers (Form SF-1034) submitted to OFA/paying agent for payment must contain a payment voucher number as explained in paragraph 3-8C above and the

following six items:

- a. Payment due date;
- b. Number of days until payment due date;
- c. Contact name (name of person preparing voucher);
- d. Telephone number of contact person;

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- e. Prompt payment applicability indicator. Use "N" only when voucher is not subject to the rules and regulations of the Prompt Payment Act. Leave blank if Act is applicable; and,
- f. Invoice number and date.

2. Payments under contracts

a. General

- (1) Review each voucher to ensure all charges are in accordance with contract requirements.
- (2) If multipayments are required, a record of payments must be filed in the contract file. See Appendix 5 for suggested format.

b. Construction Contracts

- (1) Each payment request must be supported by a HUD-9519, Acquired Property Inspection Report.
- (2) In addition to a final inspection report, the request for final payment must be accompanied by a release of claims (see Appendix 6 for a suggested format) and any warranties.

E. Authorized Certifying Officers (ACO) must approve and sign all vouchers and HUD-2542 purchase orders before sending to OFA for payment. Enough staff must be designated as ACOs to provide for prompt and even workflow. Refer to Handbook 4045.1 for further details on ACOs.

3-10. CLOSEOUT PROCEDURES Reserved

3-11. DISPOSITION OF OFFICIAL CONTRACT FILES

Upon completion of all administrative requirements and final payment, official contract files will be disposed of per the

instructions contained in Handbook 2225.6, Records Disposition Management, and FAR 4.805.

Disposition must be coordinated with the Regional Records Management Liaison Officer in the Office of Administration.

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