

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Part 2409

[Docket No. FR-5098-P-01]

RIN 2535-AA28

HUD Acquisition Regulation (HUDAR) Debarment and Suspension Procedures

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend HUD's Acquisition Regulation (HUDAR) to codify the suspension and debarment procedures applicable to HUD's procurement contracts. Such an amendment would affirm that the suspension and debarment procedures in 24 CFR part 24 apply to procurement as well as nonprocurement contracts. The contracting community is familiar with the suspension and debarment procedures in part 24 and this rule is limited to amending the HUDAR regulations to reflect the applicability of these requirements to procurement contracts.

DATES: *Comment Due Date:* September 17, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically so that HUD can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov. Hearing-or speech-impaired individuals

may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Office of Policy and Systems, Office of the Chief Procurement Officer (Seattle Outstation), Department of Housing and Urban Development, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104-1000; telephone (206) 220-5259, FAX (206) 220-5247 (these are not toll-free numbers). Persons with hearing or speech impairments may access the telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations (CFR). HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUDAR (title 48, chapter 24 of the CFR) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); and the general authorization in FAR 1.301.

II. This Proposed Rule

This proposed rule makes one change to 48 CFR 2409.7001 to clarify that HUD's suspension and debarment procedures, found at 24 CFR part 24, apply to procurement contracts. (On March 23, 2007, HUD published a proposed rule (72 FR 14015) that would redesignate 24 CFR part 24 to 2 CFR part 2424. The proposed rule published in today's **Federal Register** refers to the current regulations at 24 CFR part 24. A conforming change will be made at the final rule stage to reflect the redesignation.)

On November 26, 2003, HUD adopted, with minor revisions, the governmentwide nonprocurement debarment and suspension common rule (68 FR 66534). The governmentwide rule sets forth the common policies and procedures that federal executive branch agencies must use in taking suspension or debarment actions. The amendments made by the November 26, 2003, rule limited covered transactions to nonprocurement contracts. For many years prior to the promulgation in 2003 of the

governmentwide debarment and suspension common rule, HUD applied, to procurement contracts, the same suspension and debarment procedures that it uses for nonprocurement contracts. HUD is unable to amend the governmentwide debarment and suspension procedures. Therefore, to reflect the applicability of debarment and suspension requirements to procurement contracts, HUD is proposing to revise the HUDAR to affirm that the suspension and debarment rules in 24 CFR part 24 apply to procurement contracts. This regulatory clarification does not impose any additional requirements because the suspension and debarment procedures in part 24 are well established and the contracting community is already familiar with the requirements.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2535-0091. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule makes clarifying changes to existing governmentwide suspension and debarment procedures and does not make any major changes that would significantly impact small entities. Accordingly, the undersigned certifies that this rule will not have a significant

economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects for 48 CFR Part 2409

Government procurement.

For the reasons discussed in the preamble, HUD proposes to amend 48 CFR part 2409 to read as follows:

PART 2409—CONTRACTOR QUALIFICATIONS

1. The authority citation for part 2409 continues to read as follows:

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

2. Revise 2409.7001 to read as follows:

2409.7001 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 24 CFR part 24 and, notwithstanding 24 CFR 24.220(a)(1), apply to procurement contracts.

Dated: June 7, 2007.

Joseph A. Neurauter,

Chief Procurement Officer.

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