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Part IV

Department of Housing and Urban Development

48 CFR Part 2409

**HUD Acquisition Regulation (HUDAR)
Debarment and Suspension Procedures;
Final Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

48 CFR Part 2409

[Docket No. FR-5098-F-02]

RIN 2535-AA28

**HUD Acquisition Regulation (HUDAR)
Debarment and Suspension
Procedures**

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Final rule.

SUMMARY: This rule amends HUD's Acquisition Regulation (HUDAR) to codify the suspension and debarment procedures applicable to HUD's procurement contracts. Such an amendment affirms that the suspension and debarment procedures in 24 CFR part 24 apply to both procurement and 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. This final rule follows a July 17, 2007, proposed rule. HUD received no public comments on the proposed rule. This final rule adopts the proposed rule without change.

DATES: *Effective Date:* November 28, 2007.

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 number (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 Housing and Urban

Development 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.

On July 17, 2007, at 72 FR 39286, HUD published for public comment a rule that proposed to make 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.¹ On November 26, 2003, HUD had 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. To reflect the applicability of debarment and suspension requirements to procurement contracts, HUD, through the July 17, 2007, rule, proposed 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.

II. This Final Rule

The public comment period for the July 17, 2007, proposed rule closed on September 17, 2007. HUD received no public comments on this rule. Through this final rule, HUD adopts the July 17, 2007, proposed rule without change.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this 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 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.

Environmental Impact

This rule does not directly 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 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

¹ 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 July 17, 2007, proposed rule and this final rule, however, continue to use the reference of 24 CFR part 24. A conforming change will be made at the final rule stage of the March 23, 2007, rulemaking to reflect the redesignation.

rule does not have federalism implications and does 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 amends 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: October 19, 2007.

Joseph A. Neurauter,

Chief Procurement Officer.

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