NAHRO PolicyView Webinar Additional Q&A… Additional Related Information
(**updated April 3, 2013**)

1. Voucher HAP Renewal Eligibility in 2013

HUD Financial Management Division's March 21, 2013 letter provides a three step process for PHAs to consider using to make a rough estimate of their expected HCV renewal funding for CY 2013 for planning purposes until such time that final allocations are determined." HUD's first advised step is for each PHA to take their CY 2012 HAP expenses as reported in VMS and multiply this amount by an estimated proration factor for 2013. Until such time that additional Annual Adjustment Factors (AAFs) are published for FY 2013, NAHRO believes it is essential for each PHA to determine their 2013 voucher HAP renewal *eligibility*, by applying to their 2012 HAP expenses the "Renewal Funding Inflation Factor" for their specific PHA for 2012 (which is located on line 8 of HUD's March 1, 2012 "Enclosure A - Calculation of Calendar Year 2012 Renewal Funding Housing Choice Voucher Program").

Additional detailed information on this topic, including specific calculations for PHAs with both Housing Choice Vouchers as well as critically important information on HAP funding eligibility for some special purpose voucher programs such as HUD-VASH, NED-Category I and FUP, is available in NAHRO's article titled, "NAHRO Models Potential Budget Scenarios for Public Housing, Voucher Programs" (Washington Update - February 19, 2013).

2. Pro-Rated HAP for 2013

Would you like to know how to estimate your PHA's 2013 pro-rated HAP and administrative fee funding? HUD's letters stated that the annual average proration for HAP in calendar year 2013 will be 94 percent. Information on this topic is available in NAHRO's article titled, "FY 2013 Appropriations Update" (Washington Update - March 15, 2013). Among other things, information in this article also describes that there are no offsets of PHAs' Net Restricted Assets / HAP Reserves in 2013, HUD's planned May 1, 2013 HAP pro-ration and disbursements, and a HAP set-aside fund with an added eligible category in 2013 in order to prevent terminations of housing assistance for low-income families due to insufficient funding.

Following calculations of each PHA's voucher HAP renewal *eligibility* and downward prorated HAP funding, PHAs are encouraged to review the amount of their remaining Net Restricted Asset Balance through December 31, 2012 if applicable (line 12 of HUD's April 2013 funding enclosure) undisbursed CY 2012 and CY 2013 Budget Authority (line 15 of HUD's April 2013 funding enclosure). As a result of not having any offset from Congress in these funding sources for 2013, PHAs fortunate enough to have NRA and undisbursed CY 2012 and CY 2013 Budget Authority (now referred to as HAP Reserves available to each PHA in their project account at HUD) will be able to use these funds to augment their 2013 HAP renewal budget authority.

3. HAP Pro-Rations for the Rest of 2013

During the March 22, 2013 PolicyView webinar, a PHA asked about the anticipated HAP pro-ration percentage from HUD in May – December 2012. The answer for each PHA is different, depending on how much HAP funding the Department disbursed to them through its cash management system on a year-to-date basis, relative to how much total HAP budget authority they are eligible for in 2013 as ultimately pro-rated by the Department in mid-May to late-May 2013. As a result of PHAs receiving HAP funds at higher prorations than prorations after enactment of the sequester, generally speaking HAP prorations for the remainder of 2013 will be lower than in the first three months of the year. However, rather than depend on this type of across-the-board assumption, it would be prudent for PHAs to now estimate their 2013 HAP renewal budget authority *eligibility* and estimated pro-rated funding amounts with the information and resources provided.

4. Administrative Fee Prorations

HUD's letters stated that the annual average proration for ongoing administrative fees in calendar year 2013 will be 69 percent. Because the HUD-VASH program was exempt from the sequester, HUD officials stated during NAHRO's 2013 Legislative Conference that administrative fee pro-rations for the HUD-VASH program will be at least 74.5 percent.

5. Proration vs. Proration Estimates

As you can see from reading the first part of our March 15, 2013 article, the calculations that go into determining final pro-rations is very complex. To date, HUD has not posted VMS data from 7/1/12 - 9/30/12 or 10/1/12 – 12/31/12, so we were not able to use actual or anticipated UMLs and HAP expenses in CY 2012 to estimate pro-rations for 2013. Instead, we used information already publicly available to us as the basis for our proration calculations. Ultimately, using a different set of pro-ration figures than HUD is not ideal. For the time being however, we felt it was important to provide our members with the best information we had available at the time. Once HUD has final 2013 pro-ration figures for PHAs, we will obviously be able to better understand the underlying assumptions the Department used and reinforce those prorations at that time.

6. Compliance with HUD Voucher Program Regulations

Mindful of doing things in compliance with HUD's regulations including but not limited to a "significant" amendment or modification and any attendant requirement's under each agency's PHA Plan, panelists referred PHAs to information from HUD's PIH Notices and regulations that are posted in the related resource sections of parts II and I of the webinar. Under the subsection titled, "PHA Plan Requirements," HUD's PIH Notice 2011-28 states, "[a]ny cost-savings measures referenced in this notice that constitute a significant amendment or modification as defined in 24 CFR § 903.7(r)(2) are subject to the requirements of §§ 903.13, 903.15 and 903.17, which include a public hearing and comment period. **However, not all cost-savings measures constitute a significant amendment; that determination must be made by the PHA."**

7. Reducing Rents and/or Reducing Voucher Payment Standards

As was discussed during NAHRO's PolicyView webinars on March 22, 2013, for PHAs with significant total HAP funding shortfalls there are several ways (described below) PHAs could consider lowering contract rents of voucher-assisted dwelling units. Among the benefits of reducing contract rents in accordance with necessary procedures) rather than reducing Voucher Payment Standards, is that this method does <u>not</u> impact existing voucher-assisted households' income to rent burdens, nor does it necessarily adversely impact voucher success rates for initial leases.

In terms of PHAs' ability to analyze their respective unassisted rental housing market values for purposes of considering lowering contract rents and/or voucher payment standards (described in number 8 below), some information resources include but are not limited to:

- http://www.gosection8.com/public-housing-authorities/
- http://www.socialserve.com/more/index.html
- A variety of private firms that do rental housing market analyses.
- Property owner associations oftentimes have rental housing information in rental vacancy rates, rental housing market trends, that in combination with more specific information needed for rent reasonableness purposes (§ 982.507 Rent to owner: Reasonable rent)

PHAs should review NAHRO's Manufacturers and Supply Council (MSC) as well as the May/June 2012 issue of NAHRO' Journal of Housing and Community Development (JOHCD) to locate vendors with applicable products and services.

In terms of assisted rental housing rents, some of the State Housing Finance Agencies have apartment locators which contain rental values for properties assisted through Low-Income Housing Tax Credits (LIHTCs) as well as Section 202 and Section 811 assisted properties.

PHAs that are facing total HAP funding shortfalls by December 31, 2013, after implementing (and/or applying to HUD for waivers and implementing them after receiving HUD's approved waivers and possibly a portion of HAP set-aside funds in order to prevent terminations of housing assistance for low-income families due to insufficient funding) HAP cost reduction measures in 2013, may hold a meeting with their Board of Commissioners and the public to review their current or future policies and protocols for terminating (or suspending) housing assistance payments to existing households.

As stated in the PolicyView webinars:

- Rent Reductions: a reduction in contract rents would reduce Housing Assistance Payment expenses, only for if doing so would reduce grow rents (contract rent plus tenant-paid utility allowance) for voucher-assisted dwelling units that are currently above the voucher payment standard (by bedroom size and/or geographic area) to a level that is below the voucher payment standard; and/or

- Voucher Payment Standard Reductions: a reduction in voucher payment standards (by bedroom size and/or geographic area) would reduce Housing Assistance Payment expenses, only if doing so would reduce voucher payment standards for voucher-assisted dwelling units that are currently above the gross rent (contract rent plus tenant-paid utility allowance) to a level that is below the gross rent.

PHAs evaluating reducing rents and/or voucher payment standards, should consider the financial need to do a combination of both HAP cost reduction measures and the current and future impacts on voucher program participants, property owners, and their communities.

i. Property Owners' "Voluntary" Reduction in Rents: In the past, PHAs that have held such meetings, including with their participating property owners and voucher-assisted households, found that considerable percentages of participating property owners were willing under those circumstances to take a "voluntary" reduction in their contract rents of X%. Such "voluntary" agreements were in writing with applicable PHAs and applicable voucher-assisted tenants. In the event that these PHAs received sufficient funding in the future, agencies would be able to restore or increase their contract rents consistent with their "rent reasonableness" determinations. This measure would not require a waiver request to, or approval from, HUD. The subsection titled, "Ensuring Reasonable Rents" of Notice PIH 2011-28 (Effective until amended, superseded, or rescinded) states, "[e]ven if an owner's rent is reasonable, a PHA could request owners to voluntarily agree to a temporary rent reduction or defer rent increases to help the PHA avoid the termination of HAP contracts due to shortfalls in HCV funding. It is the owner's option to agree to such measures. However, a PHA may not "freeze" rents due to insufficient funding when an owner requests an increase, if the PHA determines the increased rent to be reasonable, and the owner does not agree to defer a rent increase."

ii. Alternative Method for "Zeroing Out" Housing Assistance Payments Without Terminating HAP Contracts: Assuming a PHA is shortfall PHA for example, they could consider lowering the gross rent of X number of dwelling units to an amount equal to the respective Total Tenant Payments for X number of households. These households would correspond with the PHA's administrative plan regarding the method for determining the possible sequence of voucher-assisted households that they would suspend or temporarily discontinue Housing Assistance Payments due to insufficient funds. By utilizing this method, a PHA would realize HAP cost savings (for the month of December for example) without having to terminate HAP Contracts and assisted dwelling leases or having to terminate housing assistance indefinitely on behalf of voucher-assisted households. If a PHA pursues this alternative method, it would be important to notify both the voucher-assisted households and participating property owners in writing of the financial reason for taking such action as well the PHAs' intent to resume making normal HAP payments one month later as a result of their being able to access the necessary funds to do so.

    If for example, a PHA "zeroed out" HAP payments for X number of households for December, the PHA would be able lease these households as of January 1st, and resume paying HAP on their behalf as of January 1st, without having to conduct and pass a new HQS inspection or initiate a new lease and HAP contract, etc. PHAs who adopt this method would need to document in the comment section of VMS for the specific household records where this occurred, as well as to make sure that the action code in their 50058 submissions to HUD were correctly coded and that these households were issued a voucher (as described in HUD PIH Notice 2012-42). In order to have the HAP funding necessary as of January 1st for example, PHAs would need to make a frontload or advance request of their HUD FMC Representative of more than 1/12 of their budget authority and of the amount automatically generated by HUD's Cash Management formula, well in advance of January 1st in order to be able to meet their anticipated HAP obligations for January 1st for the additional voucher-assisted households.

iii. "Involuntary" Rent Reduction Measure: Careful review of 982.507 Rent to owner: Reasonable rent shows that absent the specific conditions and requirements listed in the regulations, there is no explicit regulatory requirement for PHAs to perform rent reasonableness when lowering contract rents when such actions are due to insufficient annual appropriations as stipulated in the HAP Contract and assisted-dwelling lease (describe below in topic 11 - HAP Contract Provision Regarding Insufficient Funding to Support Continued Assistance). Taking such unilateral action by a PHA *without the consent* from existing participating property owners, would however be a breach of PHAs' HAP Contracts with owners, for any property owner that refused to consent to a lowered contract rent under a written lease and contract addendum and/or to sign a new HAP contract at a lowered contract. In such cases, the family will be issued a HCV to find a new unit. (Movers, like new participants, are subject to a PHA's current payment and occupancy standards.) That stated, in any circumstances where property owners accepted a lowered contract rent in writing, no additional "rent reasonableness" determinations would automatically be required of PHAs. In the event that these PHAs received sufficient funding in the future, agencies would be able to restore or increase their contract rents consistent with their "rent reasonableness" determinations.

Some of the measures PHAs consider for HAP reductions may have administrative fee expense implications.

8. NAHRO Posts HUD Waiver Approvals for PHA Review and Consideration

NAHRO posted HUD's waiver approvals to other agencies around the country. Agencies interested in determining the steps to go through to apply and receive HUD approval of applicable waivers may access the information at:

- Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2012 (March 7, 2013);

- Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2012 (December 5, 2012);

- Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2012 (September 12, 2012); and

- Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2012 (June 27, 2012)

8a. Where PHAs Should Send Their Waiver Requests?

PHAs' waiver requests must be sent to their HUD PIH Division Director at their respective HUD Regional Office. In turn, the HUD PIH Division Director at each HUD Regional Office will send it to the appropriate officials at HUD PIH headquarters. At this time, PHAs that have submitted waiver requests have experienced a final written response from HUD PIH within 10 calendar days.

8b. Voucher Programs: Examples of PHA Waiver Requests and HUD Waiver Approvals

After fully evaluating their total eligibility and funding pro-rations, several examples of HUD waiver approvals to PHAs administering various Section 8 voucher programs included in Federal Register are available for PHAs to consider including but not limited to:

i. **Waiver to Implement Lowered Voucher Payment Standards (<u>Within</u> 90 to 110 Percent of Fair Market Rents) Without Having to Wait Until Second Re-Examination of Existing Voucher-Assisted Households Under Lease**

<u>*Project/Activity*</u>*:* Fairfield Housing Authority (FHA), Fairfield, CT.

<u>*Nature of Requirement*</u>*:* HUD's regulation 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

<u>*Granted By*</u>*:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

<u>*Date Granted*</u>*:* April 6, 2012

<u>*Reason Waived*</u>*:* This waiver was granted because this cost-saving measure would enable the FHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

ii. **Waiver to Implement Lowered Voucher Payment Standards (<u>Below</u> 90 Percent of Fair Market Rents) Without Having to Wait Until Second Re-Examination of Existing Voucher-Assisted Households Under Lease)**

<u>*Regulation*</u>*:* 24 CFR 982.503(d) and 982.505(c)(3)

<u>*Project/Activity*</u>*:* Adams Metropolitan Housing Authority (AMHA), Adams, OH

<u>*Nature of Requirement*</u>*:* HUD's regulation at 24 CFR 982.503(d) allows HUD to consider a public housing agency's request for approval to establish a payment standard that is lower than the basic range of 90 to 110 percent of the published fair market rent for each/any bedroom size, but HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

<u>*Granted By*</u>*:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

<u>*Date Granted*</u>*:* June 6, 2012

<u>*Reason Waived*</u>*:* These waivers were granted because these cost-saving measures would enable the AMHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

9. HUD's Regulatory "Affordability Standard"

HUD's voucher regulation referred to as HUD's "affordability standard" [24 CFR §982.503(d)] and [24 CFR §982.503(g)] states:

"§ 982.503 Voucher tenancy: Payment standard amount and schedule. - (d) HUD approval of payment standard amount below the basic range. HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income."

"§ 982.503 Voucher tenancy: Payment standard amount and schedule. (g) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income <u>as the family share</u>. Such determination may be based on the most recent examinations of family income. (2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range."

10. 40 Percent Cap Pertaining to Initial Voucher-Assisted Leases and HAP Contracts

HUD's voucher regulation 24 CFR § 982.305 states, "PHA approval of assisted tenancy. (a) *Program requirements.* The PHA may not give approval for the family of the assisted tenancy, or execute a HAP contract, until the PHA has determined that all the following meet program requirements:

(1) The unit is eligible;
(2) The unit has been inspected by the PHA and passes HQS;
(3) The lease includes the tenancy addendum;
(4) The rent to owner is reasonable; and
(5) At the time a family <u>initially</u> receives tenant-based assistance for occupancy of a dwelling unit, and where the <u>gross rent</u> of the unit exceeds the applicable payment standard for the family, the <u>family share</u> does not exceed 40 percent of the family's monthly adjusted income."

11. HAP Contract Provision Regarding Insufficient Funding to Support Continued Assistance

A provision in the Housing Assistance Payments Contract for the Section 8 Tenant-Based Housing Choice Voucher Program states, "The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program." In the context of the information provided in voucher program statute and voucher program regulations, this provision of the voucher program HAP contract provides PHAs with the authority to take some of the measures described in our PolicyView webinars and attendant resources.

12. PHAs Lowered Payment Standard for Transfers of Unit, Port-Ins, New Admissions To Take Effect Now Without The Need for a HUD Waiver Approval

As discussed in NAHRO's PolicyView webinars, PHAs should consider a series or combinations of cost reduction measures rather than relying on one measure alone. Dealing with HAP shortfalls entirely by not leasing turnover vouchers has its own set of consequences. Such adverse consequences include reducing Unit Months Leased, the number of households a PHA could serve this year, next year and beyond, as well as reducing a PHA's administrative fee earning eligibility to staff the program.

For PHAs considering reducing their Housing Assistance Payment (HAP) expenses through a reduction in their voucher payment standard, one method that PHAs can implement right away without needing to apply for a waiver or approval from HUD, is to apply them to transfer of units / relocations, port-ins, and/or new admissions. In other words, whether or not a PHA is planning to apply to a waiver to HUD in order to implement lowered voucher payment standards to implement earlier than the second reexamination for existing voucher-assisted households under lease, *all* PHAs needing to realize HAP cost reductions may implement lowered payment standards (by bedroom size and/or geographic area) immediately for: 1) transfers of unit / relocations; 2) port-ins and/or 3) new admissions; as long as by doing so PHAs would be within HUD's "affordability standard" (described above) after implementation. PHAs can assess their current annual rates of 1) transfers of unit / relocations; 2) port-ins and/or 3) new admissions; to determine what percentage of their remaining Unit Months Leased (UMLs) would apply. Clearly, lowering voucher payment standards would likely result in lower annual rates in the total of these three categories as well as voucher success rates, which would need to be taken into consideration by PHAs prior to estimating potential HAP expense reductions. Consideration of implementing this measure in combination with the discretionary authority and obligations PHAs have with respect to honoring requests to move as well as ports is provided in great detail in HUD PIH Notice 2012-42 (http://www.nahro.org/sites/default/files/searchable/PIH2012-42.pdf). Depending on the date when PHAs implement their lowered payment standards, PHAs may be able to realize significant reductions in their HAP expenses while at the same time sustaining or possibly even increasing their total Unit Months Leased.

13. Waiver of Utility Allowances

Nationwide, approximately 25 percent of voucher-assisted households reside in a dwelling unit that is greater than the number of bedrooms for which each household is authorized for their Section 8 voucher. For example, this practice is allowed so long as the gross rent for the actual dwelling unit (e.g. 4 bedroom) is rent reasonable and when applying the voucher payment standard for the household's authorized voucher size (e.g. 3 bedroom) and the actual bedroom size for the tenant-paid utility allowance (e.g. 4 bedroom) the gross rent of the unit for their initial occupancy does not exceed 40 percent of the family's monthly adjusted income for the family's share (24 CFR § 982.305). Nationwide, each tenant-paid utility allowance is approximately 10 percent greater than the equivalent dwelling unit type (e.g., apartment, row-house, town house, single-family detached, etc.) and fuel type (e.g. gas, electric, oil, etc.) for the next smallest bedroom size. Given their total HAP funding position, some PHAs may want to seek a waiver with HUD if they can no longer afford to subsidize the tenant-paid utility allowances of larger-sized dwelling units.

In determining the monthly HAP for a household, PHAs may apply for a waiver to HUD such that if approved, the amount allowed for tenant-paid utilities allowances would not exceed the appropriate utility allowance for the household's subsidy standard unit size as determined by PHA in accordance with its occupancy requirements for determining authorized voucher sizes, regardless of the actual size of the dwelling unit leased by the household. In making their waiver request to HUD, PHAs would need to make clear that upon a request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability.

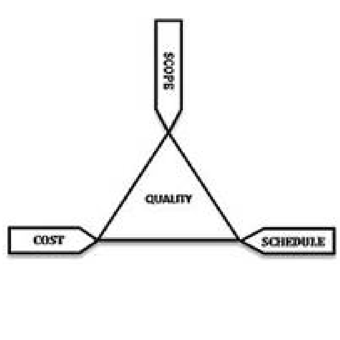
14. HUD-VASH HAP and Combined HAP Reserves

HUD's PIH Notice 2011-27 states, "Once the initial award for the VASH program has been expended and the VASH increment renewed, unexpended budget authority from the VASH renewal increment will accrue to the overall HAP NRA and will be available for current and future needs of the HCV program, including VASH." Even though HUD has combined PHAs' HUD-VASH NRA with their HCV NRA, PHAs should follow the specific instructions above to determine whether or not they have HUD-VASH related NRA from an initial HUD-VASH increment that was expended and has been renewed. While the HUD-VASH program is a unit-based program rather than a budget-based program and PHAs are under an obligation to lease an eligible homeless veteran if/when referred to them by their local VA office, PHAs with NRA related to their HUD-VASH program from initial HUD-VASH increments where that incremental HAP was expended and renewed, will be available to use these NRA funds "for current and future needs of the HCV program, including VASH."

Additional Questions & Answers?

After having watched NAHRO's PolicyView webinars parts I &II, accessed the related resources and information above, NAHRO members with additional questions may send them for review and consideration to: policyresearch@nahro.org

As previously reported, both pro-rations for administrative fees and Housing Assistance Payments in FY 2013 as appropriated by Congress, are the lowest in the 38 year history of Section 8 voucher programs. Downward pro-rations in HAP adversely impacts PHAs' ongoing administrative fee revenues and downward pro-rations in PHAs' ongoing administrative fees adversely impacts their ability to serve low-income households and participating property owners. Over the past decade, PHAs have received on average approximately 87 percent of their annual ongoing administrative fee funding from Congress and HUD each year. As a result of dramatic funding reductions, many PHAs are in a very difficult position of having to limit and reduce their program service and performance. The cost, scope, time and schedule requirements necessitated by existing voucher program regulations and HUD assessment systems have inherent competing constraints that impacts quality.



The project management triangle (also called the Triple Constraint or the Iron Triangle) is universal to all industries and sectors, including in a government measurement and program oversight context. Over the years, senior HUD PIH officials presented this triangle and the governing concepts to NAHRO members during their presentations at our annual legislative conferences. It is incumbent upon HUD not to micromanage local operations and impede PHAs' mission to serve low-income households to the greatest of their abilities with the funding provided. Instead, HUD should move quickly to limit risk and measure key program outcomes in a way that harmonizes the inherent limitations in cost, scope, time and schedule requirements.