

# Subpart 536.2 - Special Aspects of Contracting for Construction

Parent topic: [Part 536 - Construction and Architect-Engineer Contracts](#)

## 536.201 [Reserved]

## 536.202 [Reserved]

## 536.203 Government estimate of construction cost.

### (a) *Preparation of the Government Estimate.*

- (1) A copy of the independent Government estimate shall be submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals.
- (2) Before releasing a solicitation amendment that may affect price, a revised Government estimate shall be provided.

### (b) *Release of the Government Estimate.*

- (1) Prior to award, the Government may disclose budget (*e.g.* prospectus) information in addition to the information required under [FAR 36.204](#) and GSAM [536.204](#).
- (2) During negotiations, the Government may disclose specific cost figures, but only to the extent considered necessary for arriving at a fair and reasonable price (also see [536.7103\(c\)](#) and [FAR 15.306\(e\)\(3\)](#)).
- (3) Prior to award and during negotiations, the overall amount of the independent Government estimated price may not be disclosed.

(c) *Use of the Government estimate.* The contracting officer may use the Government estimate to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness or realism of prices.

## 536.204 Disclosure of the magnitude of construction projects.

- (a) For construction projects over \$10,000,000, show the magnitude in ranges having increments of \$10,000,000 (*e.g.*, \$25,000,000 to \$35,000,000). The contracting officer may show the magnitude in ranges using a multiple of \$10,000,000 (*e.g.*, \$70,000,000 to \$100,000,000), but the lower figure shall be at least half of the higher figure.
- (b) For the CMc project delivery method:

(1) The range maximum is the total evaluated price, as described at [536.7103\(b\)\(3\)](#), that the Government will accept, inclusive of the design phase services, guaranteed maximum price option(s), and other separately priced line items.

(2) Advanced notices and solicitations may state Government budget (*e.g.* prospectus) information for the guaranteed maximum price, as described at [536.7102](#), for construction services.

## **536.207 Pricing Fixed-Price Construction Contracts.**

For the CMc project delivery method, the construction contract is a variation of the fixed-price incentive (successive target) contract type, described in [FAR 16.403-2](#), that is tailored for construction. The profit adjustment formula is accomplished via a shared savings ratio specified in the contract, as described at [536.7105-5](#).

## **536.208 Concurrent Performance of Firm-Fixed-Price and Other Types of Construction Contracts.**

The prohibition at [FAR 36.208](#) does not apply to construction contracts under the CMc project delivery method.

## **536.270 Options in construction contracting.**

### **536.270-1 Use of options.**

(a) Subject to the limitations in this section, contracting officers may include options in contracts when it is in the Government's interest.

(b) The scope of work in the base contract at award shall require the contractor to provide a discrete and fully functional deliverable. Options shall not be used to incrementally deliver work required to fulfill the requirements of the scope of work for the base contract.

(c) Contracting officers shall justify in writing the use of options.

(d) Including an option may be in the Government's interest when, in the judgment of the contracting officer:

(1) Additional work beyond the base contract is reasonably foreseeable

(2) It would not be advantageous to award a separate contract;

(3) It would not be advantageous to permit an additional contractor to work on the same site;

(4) Services arising out of or relating to the underlying construction contract may be required during or after substantial completion of the scope of work. For instance, if building equipment (*e.g.*, mechanical and electrical equipment) will be installed under the construction contract, it may be

advantageous to have the construction contractor maintain and service the equipment. In such an instance, the services performed may be included as an option to the underlying construction contract. Contracting officers shall ensure that the applicable clauses are included in any such option (e.g., Service Contract Act); or

(5) It is otherwise justified.

(e) Options for construction work may provide for an economic price adjustment based on cost or price indexes of labor or materials (see FAR 16.203-4(d)). Subject to the approval of the Head of the Contracting Activity (HCA), the contracting officer may develop and insert a project-specific price adjustment clause into the solicitation.

### **536.270-2 Solicitations.**

Solicitations containing options shall:

(a) Include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see [536.270-5](#));

(b) State the period within which the options may be exercised; and

(c) State whether the basis of evaluation is inclusive or exclusive of the options (if exclusive, see [536.270-4\(c\)](#)).

### **536.270-3 Evaluation.**

For sealed bidding that includes options:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and all options designated to be evaluated.

(b) Before opening bids that include options, the contracting officer must determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options does not exceed the amount offered for the base bid, the evaluated options, and the same combination of items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the options to be used.

### **536.270-4 Exercise of options.**

(a) The contracting officer shall exercise options in writing within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining, in writing, that all the following conditions exist:

- (1) Funds are available.
  - (2) The requirement covered by the option fulfills an existing Government need.
  - (3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.
  - (4) The contractor is not listed in the System for Award Management Exclusions (see FAR 9.405-1).
  - (5) The contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.
  - (6) Exercising the option is in accordance with the terms of the option.
  - (7) The option price is fair and reasonable, unless already determined as such (*e.g.*, at time of award).
- (c) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302).
- (d) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

### **536.270-5 Solicitation provisions and contract clauses.**

- (a) Insert a provision substantially the same as the provision at [552.236-74](#), Evaluation of Options, in solicitations for fixed-price construction contracts when the solicitation contains an option clause and options will be included in the evaluation for award purposes.
- (b) Insert a provision substantially the same as the provision at [552.236-75](#), Evaluation Exclusive of Options, in solicitations for fixed-price construction contracts when the solicitation includes an option clause and options will not be included in the evaluation for award purposes.
- (c) Insert a provision substantially the same as the provision at [552.236-76](#), Basis of Award-Sealed Bidding Construction, in solicitations for fixed-price construction contracts when contracting by sealed bidding. Use the provision with its Alternate I when the solicitation contains an option clause.
- (d) Insert a clause substantially the same as the clause at [552.236-77](#), Government's Right to Exercise Options, in solicitations and contracts for construction that include options.