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## **Subpart 536.1 - General**

### **536.101 Applicability.**

This part supplements FAR 36 policies and procedures applicable to contracting for construction and architect engineer services. Contracts for construction management services are covered by FAR 37 and GSAM [part 537](#). [part 536](#) shall take precedence when the acquisition involves (1) construction or architect-engineer services, and (2) when the requirement is inconsistent with another part of the GSAR.

### **536.102 Definitions.**

“Construction activity” means the organizational level of the agency that has authority and responsibility for the architectural, engineering, and other technical or administrative aspects of design and construction.

“Construction-Manager-as-Constructor” (CMc) means the project delivery method where design and construction are contracted concurrently through two separate contracts and two separate contractors. Unlike the traditional design-bid-build delivery method, under the CMc delivery method, the Government awards a separate contract to a designer (*i.e.*, architect-engineer contractor) and to

a construction contractor (*i.e.*, CMc contractor) prior to the completion of the design documents. The Government retains the CMc contractor during design to work with the architect-engineer contractor to provide constructability reviews and cost estimating validation. The CMc contract includes design phase services at a firm-fixed-price and an option for construction at a guaranteed maximum price.

“Statutory cost limitations” means the cost limits included in the agency’s statutory authorization or annual appropriations act (by law).

### **536.103 Methods of Contracting.**

(a) Except as provided in paragraph (b) of this subsection, although CMc contracts are considered incentive-type contracts (see [536.207](#)), contracting officers are authorized to use the CMc project delivery method without completing a determination and finding as required by [FAR 16.401\(d\)](#). Contracting officers shall discuss the CMc project delivery method as part of the acquisition plan (see [FAR 7.105](#)).

(b) To the extent the contracting officer incorporates an award-fee component into the CMc (in addition to the shared savings incentive), then the determination and finding required by [FAR 16.401\(d\)](#) is required to support any such award-fee.

(c) The contracting officer shall use the tradeoff process as described in [FAR 15.101-1](#), unless a different source selection approach is approved in writing by the HCA, for selecting a construction contractor under the CMc project delivery method, and select sources in accordance with subpart [536.7103](#).

## **Subpart 536.2 - Special Aspects of Contracting for Construction**

### **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.

## **Subpart 536.5 - Contract Clauses**

### **536.506 Superintendence by the contractor.**

Insert the clause at [552.236-6](#), Superintendence by the Contractor, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

### **536.511 Use and possession prior to completion.**

Insert the clause at [552.236-11](#), Use and Possession Prior to Completion, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

### **536.515 Schedules for construction contracts.**

Insert the clause at [552.236-15](#), Schedules for Construction Contracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause-

(a) With its Alternate I when the contract amount is expected to exceed the simplified acquisition threshold and a design-bid-build project delivery method will be followed; or

(b) With its Alternate II when the contract amount is expected to exceed the simplified acquisition threshold and a design-build project delivery method will be followed.

(c) With its Alternate III when the contract amount is expected to exceed the simplified acquisition threshold and a construction-manager-as-constructor project delivery method will be followed.

### **536.521 Specifications and drawings for construction.**

Insert the clause at [552.236-21](#), Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed—

(a) With its Alternate I when a design-build project delivery method will be followed.



(b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

### **536.570 Authorities and limitations.**

Insert the clause at [552.236-70](#), Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

### **536.571 Contractor responsibilities.**

Insert the clause at [552.236-71](#), Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause:

- (a) With its Alternate I when a design-build project delivery method will be followed.
- (b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

### **536.572 Submittals.**

Insert the clause at [552.236-72](#), Submittals, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

### **536.573 Subcontracts.**

Insert the clause at [552.236-73](#), Subcontracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

## **Subpart 536.6 - Architect-Engineer Services**

### **536.602 Selection of firms for architect-engineer contracts.**

#### **536.602-1 Selection criteria.**

(a) [FAR 36.602-1](#) requires that agencies include “location in the general geographical area of the project and knowledge of locality of the project” as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5 percent of the total weight of all evaluation criteria. In order to receive the maximum score for this factor, the architect-engineer firm(s) must demonstrate that at

least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) FAR Deviation. Under an approved class deviation from [FAR 36.602-1\(a\)\(5\)](#), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(4) For procurements that are not project specific, such as indefinite-delivery indefinite-quantity contracts, evaluate based on the geographical area(s) covered by the contract.

(b) The public announcement for a proposed project should identify the general geographical area of the project such as:

(1) A radius in miles or other appropriate unit of measure, or

(2) The Metropolitan Statistical Area, county(ies), or state(s) surrounding the project.

(c) For more information on the Architect Engineer selection process, see the GSA Design Excellence Policies and Procedures at <http://gsa.gov/designexcellence>.

### **536.602-2 Evaluation boards.**

(a) Architect-engineer evaluation board members must be experts in the fields of architecture, engineering or related design professions, such as landscape architecture, urban design and interior design, except as provided in paragraph (b)(3). Board members must also collectively have expertise in construction, government, and related acquisition matters.

(b) The majority of the board members must be GSA employees. Evaluation boards must not exceed five (5) voting members. If fewer, the board must have an odd number of voting members. The voting members of the evaluation board shall include:

(1) One (1) highly qualified architect or a related design professional employed by GSA.

(2) One (1) highly qualified engineer employed by GSA.

(3) One (1) representative of the Chief Architect of GSA or another GSA design professional.

(4) Consistent with [FAR 36.602-2\(a\)](#), private practitioners (*e.g.*, GSA National Register of Peer Professionals, regional architecture professionals, community representatives).

(c) A maximum of one (1) representative of the client organization(s), at the client's option[, if applicable, may participate as a voting member in the activities of the evaluation board. Although not mandatory, GSA strongly recommends that this voting member be a highly qualified design professional.

(d) A maximum of two (2) non-voting advisors may participate in all activities of the evaluation board except voting. The client organization(s) may have only one (1) non-voting advisor to the board. The GSA may also have one non-voting advisor.

(e) Contracting officers should attend all board meetings and all external communications shall route through the contracting officer.

(f) Other than the individuals appointed under paragraphs (b) through (e), there must be no other

advisors, or participants in the official activities of the board.

(g) The selection authority officially appoints the evaluation board members.

(h) Each board member, including advisors, must sign a "Conflict of Interest Acknowledgement and Nondisclosure Agreement" ([515.305-71 Actions before releasing proposals.](#)) before the activities of the board commence. No person may serve as a board member if that person or any member of that person's family has any direct financial or employment interest in any of the firms being evaluated. The board member is responsible for identifying any possible conflict of interest once the competing architect-engineer firms have been identified. If a conflict of interest is identified, the contracting officer shall determine whether to disqualify the member from the board.

### **536.602-3 Evaluation board functions.**

(a) The evaluation board performs the functions described in [FAR 36.602-3](#).

(b) Proposals shall be protected in accordance with [FAR 3.104](#).

(c) Evaluation boards recommend, in order of preference, the most highly qualified architect-engineer firms for the specific project to the selection authority.

(1) Each board member is responsible individually for evaluating and rating the qualifications of each firm being considered following the established evaluation criteria.

(2) The Chairperson of the board must maintain the integrity of the evaluation process and ensure that the final selection report is prepared and submitted to the selection authority.

### **536.602-4 Selection authority.**

(a) The Chief Architect of GSA is delegated as the selection authority for architect-engineer procurements. This authority may be re-delegated in accordance with service-level policy to appropriate officials.

(b) The selection authority reviews the recommendations from the evaluation board which lists in order of preference the most highly qualified architect-engineer firms. If the selection authority does not concur with the recommendation from the evaluation board, the selection authority must provide to the contracting officer a written explanation of the reason.

### **536.602-70 Architect-Engineer 6 Percent Fee Limitation.**

The Architect-Engineer topic page on the GSA Acquisition Portal at <https://insite.gsa.gov/acquisitionportal> contains specific job aids, which must be used to ensure consistent application of the 6 percent fee limitation in accordance with [FAR Part 15.404-4\(c\)\(4\)\(i\)\(B\)](#), for architect-engineer services for public works or utilities for production and delivery of designs, plans, drawings, and specifications.

## **Subpart 536.70 - Art in Architecture.**

### **536.7000 Scope of Subpart.**

GSA's Art in Architecture (AiA) Program is responsible for the overseeing and commissioning of artists to create artworks when designing new Federal buildings and when making substantial repairs and alterations to existing Federal buildings, as appropriate. This subpart prescribes acquisition policies, standards, and procedures for commissioning art for GSA's AiA Program.

### **536.7001 General.**

#### **536.7001-1 Applicability.**

(a) Art in architecture contracts are subject to the requirements in other parts of the GSAM, which shall be followed when applicable.

(b) When a requirement for art in architecture contracts in this subpart is inconsistent with a requirement in another part of the GSAM, this [subpart 536.70](#) shall take precedence.

#### **536.7001-2 Authority.**

(a) In May 1962, the *Guiding Principles for Federal Architecture* report emphasized that the design of new buildings should provide visual testimony to the dignity, enterprise, vigor, and stability of the American Government. The report also stated that where appropriate, fine art should be incorporated in the designs of Federal buildings, with emphasis on the work of living American artists.

(b) In January 1963, GSA established the AiA Program.

(c) In November 2005, 41 CFR Part 102-77 Art-In-Architecture was published requiring Federal agencies to incorporate fine arts as an integral part of the total building concept when designing new Federal buildings, and when making substantial repairs and alterations to existing Federal buildings, as appropriate.

(d) In accordance with Executive Order (EO) 13934, agencies should prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery.

#### **536.7001-3 Methods of contracting.**

(a) Contracting officers shall acquire art in architecture services by negotiation, and select sources

in accordance with [536.7003](#).

(b) To the extent practicable, contracting officers should consider the GSA National Artists Registry to conduct market research but may use alternative sources or a combination of these methods.

(c) The advisory multi-step process described in FAR [15.202](#) may be adapted for use with acquisitions under this subpart. In an advisory process, potential offerors submit information pre-solicitation that allows the Government to advise them about their potential to be viable competitors. No respondent is precluded from competing under an advisory process, but it may and often does result in a more focused and effective competition with long-shot respondents opting out.

(d) A phased evaluation may be adapted for use with acquisitions under this subpart. In a phased evaluation, many offers are evaluated in the first phase under first round evaluation criteria. Fewer offers are considered in one or more subsequent phases on additional pre-specified evaluation criteria. While an initial phase evaluation decision is not a competitive range decision, it does eliminate proposals from the competition, so a pre-award notice to unsuccessful offerors is required. If a proposal is determined to be technically unacceptable, price does not need to be considered. Price must be considered for phases where an offer is eliminated from competition based on a tradeoff approach and prior to award.

(e) All art in architecture contracts shall be fixed-priced contracts only, Final concept design and fabrication shall be fixed price. Unless otherwise justified in writing, all installation of artwork shall be fixed price.

(f) Artwork may be fabricated and installed through the construction contract for the project if the construction contractor will contribute significantly to the successful completion of the artwork.

(g) The total price of the artwork must be consistent with the GSA Art in Architecture (AiA) Policies and Procedures Guide at <https://gsa.gov/artinarchitecture>.

## **536.7002 Policy.**

GSA contracting activities shall use the policies and guidelines unique to the acquisition of artwork as prescribed in this subpart in conjunction with the GSA Art in Architecture (AiA) Policies and Procedures Guide at <https://gsa.gov/artinarchitecture>. If there is a conflict between the GSA Art in Architecture (AiA) Policies and Procedures Guide and this subpart, this subpart shall govern.

### **536.7002-1 Acquisition planning.**

(a) The contracting office shall receive a comprehensive project plan which addresses all aspects of project management and acquisition for the associated federal building construction or modernization project before proceeding with an art in architecture procurement. The fine arts officer will ensure all planning documents reference appropriate funding, goals, and milestones for the project.

(b) The Center for Fine Arts, in collaboration with the PBS Office Acquisition Management, may provide prototypical language to include in art in architecture solicitations

(c) An Art in Architecture Panel, as outlined in the *GSA Art in Architecture (AiA) Policies and*

*Procedures* at <https://gsa.gov/artinarchitecture>, will be instrumental in the acquisition planning process and will be responsible for:

- (1) Reviewing artist portfolios and recommending artists for inclusion in the GSA National Artist Registry.
- (2) Conducting an inaugural meeting for a project.
- (3) Determining the scope of the artwork for a project.
- (4) Recommending a group of artists from the Registry for GSA to specifically solicit for a project (in addition to the general solicitation posted in the GPE).
- (5) Reviewing and providing critiques, for both artistic merit and long-term maintainability, of an artist's preliminary design concept and final design concept for a project.

### **536.7002-2 Public announcement.**

(a) *Governmentwide point of entry.* The contracting officer shall make the art in architecture synopsis and solicitation available through the System for Award Management Contract Opportunities at <https://www.sam.gov>.

(b) *Timeline for posting synopsis.* Except as provided in FAR [6.3](#), the synopsis shall be published at least 15 days before issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

(c) *Synopsis content.* The art in architecture synopsis shall include at a minimum:

(1) General description of the project and purpose of the art in architecture acquisition;

(2) Statement that:

(i) Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery;

(ii) Works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings; and

(iii) When a statue or work of art commissioned is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation;

(3) Magnitude of the project ( *i.e.*, construction price range, see FAR [36.204](#) and [536.204](#)), and the limitations of art in architecture funding ( *e.g.*, 0.5 percent of the project total);

(4) Invitation for potential offerors to join the GSA National Artists Registry, providing information to allow GSA to advise artists about their potential to be viable competitors;

(5) Description of the phased evaluation or other evaluation method. All procurements using a phased evaluation must provide clear detail of the evaluation factors which are relevant for each phase and must include pricing;

- (6) Technical criteria to be used to evaluate artists for the acquisition;
- (7) Request for a price proposal; and
- (8) Submission deadline(s) to submit information for consideration.

(d) *Synopsis approval process.* Prior to publication of the art in architecture synopsis, the contracting officer shall coordinate with the project manager and fine arts officer for approval.

(e) *Timeline for posting solicitation.* Except as provided in FAR 6.3, the contracting officer shall allow at least a 30-day response time for receipt of proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

### **536.7002-3 Competition.**

Acquisition of art in architecture services in accordance with the procedures in this subpart will constitute a competitive procedure under FAR Part 6.

### **536.7002-4 Procedures.**

(a) Sources for art in architecture contracts shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in FAR parts 13, 14, and 15.

(b) The solicitation for art in architecture services should be issued only after the architect-engineer services or design-build construction solicitation for the project has been published so that both contract awards can be aligned and the artist and architect-engineer contractor can collaborate during the design phase of the project.

(c) The solicitation must require submission of a technical proposal, which addresses the selection criteria in 536.7003-1(a), and a price proposal, which addresses the line items or options in 536.7001-3(e). Artists on the GSA National Artists Registry may use their registry submission ( *i.e.*, GSA Form 7437) as part of their technical proposal.

(d) The statement of work for art in architecture contracts should:

(1) Require the artist to collaborate with the architect-engineer or design-build contractor to avoid any duplication of labor, any removal and reconstruction of building elements affected by an artwork, and any negative impact to the project schedule;

(2) Task the artist to review the building design documents to ensure that art is an integral component of the building project;

(3) Clarify that no discussions between artists and other contractors, tenant agencies, or community representatives shall be considered as a change to the contract unless incorporated by the contracting officer through a modification;

(4) Require a preliminary concept design which complies with the GSA Art in Architecture (AiA) Policies and Procedures Guide at <https://gsa.gov/artinarchitecture> and includes drawings, models,



photographs, or digital renderings and animations, as applicable;

(5) Require a final concept design which complies with the GSA Art in Architecture (AiA) Policies and Procedures Guide at <https://gsa.gov/artinarchitecture>;

(6) Require site visit(s), if warranted; and

(7) Require the artist to provide professional photographic documentation of the fully completed and installed artwork; information on the artwork's meaning, defining characteristics, fabrication, materials, and installation; and any special maintenance instructions for the artwork.

(8) Stipulate that the artist's final concept design, and fully completed and installed artwork will become the property of GSA.

(e) Art in architecture contract submissions ( *e.g.*, preliminary and final concept design) must be reviewed and approved by the contracting officer, in collaboration with the project manager and fine arts officer.

(f) Legal concurrence and head of contracting activity written approval must be provided to terminate, delay or stay an art in architecture contract for any reason; this includes a determination not to exercise a fabrication or installation option.

(g) The fully completed and installed artwork will be accessioned into the GSA Fine Arts Collection.

### **536.7003 Selection of artists for art in architecture contracts.**

#### **536.7003-1 Selection criteria.**

(a) GSA will evaluate each potential contractor in terms of its:

(1) Experience - the scale, range, and complexity, including the media, materials, content, style, budget, and market value of the artist's work;

(2) Past Performance - previous work on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(3) Capacity - the ability to accomplish the work in the required time;

(4) Overall Approach - brief written statement of an overall approach to the project, including the extent to which the approach is consistent with the standards publicly announced under [536.7002-2\(c\)\(2\)](#); and

(5) Total Evaluated Price - for the design, development, fabrication and installation of the artwork.

(b) The combined weight of the technical evaluation factors shall be compared with price, *e.g.* significantly more important than price, approximately equal to price, significantly less important than price.

(c) The specific standards for each selection criterion may be tailored to suit the unique conditions of a particular project.



(d) The selection authority must approve the relative weights and standards established for the selection criteria before the selection process commences.

#### **536.7003-2 Evaluation board.**

(a) Art in architecture evaluation board members should collectively have distinct expertise relevant to the project, including knowledge of artwork and its long term care, the architect-engineer design philosophy for the project, the programmatic and functional needs of the Federal tenant, and the character of the community in which the project is located.

(b) Evaluation boards shall not exceed five (5) voting members.

(c) A maximum of one (1) representative of the tenant organization(s), at the tenant's option, may participate as a voting member in the activities of the evaluation board.

(d) Evaluation boards shall not exceed two (2) non-voting advisors. The non-voting advisors may include the same individuals from the Art in Architecture Panel.

(e) Consistent with FAR 7.503(c)(12)(ii), private practitioners (*e.g.*, GSA National Register of Peer Professionals, regional art professionals, community representatives) may participate as non-voting advisors in the activities of the evaluation board.

(f) Other than the individuals appointed under paragraphs (a) through (e), there must be no other advisors or participants in the official activities of the board.

(g) The selection authority officially appoints the evaluation board members.

(h) Each board member must sign a "Conflict of Interest Acknowledgement and Nondisclosure Agreement" (Figure 515.3-1) before the activities of the board commence. No person may serve as a board member if that person or any member of that person's family has any direct financial or employment interest in any of the artists being evaluated. The board member is responsible for identifying any possible conflict of interest once the competing artists have been identified. If a conflict of interest is identified, the contracting officer shall determine whether to disqualify that member from the board.

#### **536.7003-3 Evaluation board functions.**

(a) The evaluation board performs the functions described in [536.7003](#).

(b) Proposals shall be protected in accordance with FAR [3.104](#).

(c) The contracting officer may determine when and whether to share pricing proposals with the board.

(d) Evaluation boards recommend, in order of preference, the most highly rated proposal(s) for the specific project to the selection authority. At the request of the contracting officer, the board may provide a recommendation for trade off decisions.

(1) Each board member is responsible individually for evaluating and rating the qualifications of each artist being considered following the established evaluation criteria.

(2) The Chairperson of the board shall maintain the integrity of the evaluation process and ensure that the final selection report is prepared and submitted to the selection authority.

#### **536.7003-4 Selection authority.**

(a) The Chief Architect of GSA is delegated as the selection authority for art in architecture procurements. This authority may be re-delegated in accordance with service-level policy to appropriate officials.

(b) The selection authority reviews the recommendations from the evaluation board which lists in order of preference the most highly rated proposal(s). If the board has not considered price in its recommendations, the selection authority shall consider price as well as the board recommendation. If the selection authority does not concur with the recommendation from the evaluation board, the selection authority must provide for the contracting officer a written explanation of the reason.

(c) If the selection authority does not select a proposal that is consistent with the standards set forth under [536.7002-2\(c\)\(2\)](#), the selection authority shall submit a report to the GSA Administrator explaining the reason for the selection despite its noncompliance with these standards.

#### **536.7003-5 Evaluation process.**

(a) As part of proactive market research, the evaluation board, in collaboration with the contracting officer, may review the existing GSA National Artists Registry to identify qualified sources to solicit for the art in architecture acquisition.

(b) Proposals received by the solicitation deadline must be evaluated against the evaluation criteria in [536.7003-1\(a\)](#).

(c) Based on the ratings of each submission against the evaluation criteria, the contracting officer may follow an advisory multi-step or a phased evaluation, or establish a competitive range composed of the most highly rated proposals.

(1) Oral presentations, similar to interviews, by the highest rated artists may be conducted by the government to compliment the written information or streamline the selection process (see FAR [15.102](#)).

(2) If an offeror is eliminated from further consideration for award, written notice of this decision shall be provided in a timely manner (see FAR [15.503](#)).

#### **536.7003-6 Notification of award.**

(a) The contracting officer shall post timely notice of the award through the GPE.

(b) Pursuant to FAR [15.503](#), the contracting officer shall provide notification to unsuccessful artist(s) within 3 days after contract award or any time an offer is eliminated from the competition with the reason(s) the artist's proposal was not accepted and, for notifications after contract award, an explanation of the final artist selection.

# **Subpart 536.71 - Construction-Manager-as-Constructor Contracting**

## **536.7101 Scope of Subpart.**

This subpart describes policies and procedures for the use of the CMc project delivery method.

## **536.7102 Definitions.**

As used in this subpart—

“CMc Contingency Allowance (CCA)” means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

“Cost” means allowable costs in accordance with FAR Part 31.

“Cost of Performance” means the final sum of cost of the construction work and fee for the construction work.

“Early Work Package” means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

“Estimated Cost of the Work (ECW)” means the estimated cost of the construction work, not including home office overhead.

“Fee for the Construction Work” means the amount established in the construction contract for the contractor's profit and home office overhead costs, as described in FAR part 31, for the construction work.

“Guaranteed Maximum Price (GMP)” means the sum of the ECW, CCA, and the fee for the construction work.

## **536.7103 Construction Contract Solicitation Procedures.**

(a) *Procurement Timing.* The request for proposals should be issued only when the project design requirements have been developed to a sufficient degree of specificity to permit competition with meaningful pricing for the ECW. The contracting officer should obtain written documentation for the contract file from the project manager that the project design requirements satisfy the condition stated in this section.

(b) *Proposal Evaluation.*

(1) *Evaluation Factors.*

(i) Except as provided in paragraph (ii) of this subsection, the solicitation shall provide that the technical evaluation factors, when combined, shall be considered significantly more important than cost or price.

(ii) Subject to the approval of the HCA, the weighting of the technical evaluation factors and cost or price may be different than that required under paragraph (i) of this subsection. Any such written approval shall be documented in the contract file.

(2) *Price Realism.* The contracting officer shall provide for a price realism analysis in the solicitation for the purpose of assessing, among others, whether an offeror's price reflects a lack of understanding of the contract requirements or risk inherent in an offeror's proposal. The solicitation shall provide offerors with notice that the agency intends to perform a price realism analysis.

(3) *Total Evaluated Price.* For purposes of evaluation, the total evaluated price shall include the firm-fixed-price for design phase services, the construction work GMP option(s), and any other fixed-priced line items. If advance pricing elements such as extended overhead rates and daily delay rates are proposed, those shall also be evaluated as part of the total evaluated price.

(c) *Government Budget (e.g. Prospectus) Information.* Subject to the approval of the contracting director, the solicitation may include information contained or referenced within a prospectus submission to Congress for a project.

## **536.7104 Construction Contract Award.**

In accordance with FAR 4.1001, the contracting officer shall use the SF 1442 to identify the services or supplies to be acquired as separately identified line items on a unit price or lump sum basis including the design phase services, the construction work GMP option(s), and any other work not included in the previously identified items.

## **536.7105 Construction Contract Administration.**

### **536.7105-1 Responsibilities.**

(a) During all phases of the project, the architect-engineer contractor that is providing design services under a separate contract with GSA is contractually responsible for the design in the same manner as under a traditional, design-bid-build project delivery method.

(b) The design phase services provided by the construction contractor can include, but are not limited to, scheduling, systems analysis, subcontractor involvement, cost-estimating, constructability reviews, cost-reconciliation services, and market analysis.

(c) The scope of work should task the construction contractor with reviewing the design documents and providing pricing information at various defined milestones during the design phase.

(d) During the design phase, the architect-engineer contractor and the construction contractor shall collaborate on the design and constructability issues. The goal of this collaboration is to establish a final ECW that does not exceed the original target ECW.

(e) No discussions between the architect-engineer contractor and the construction contractor shall

be considered as a change to the construction contract or design contract unless incorporated by the contracting officer through a modification.

### **536.7105-2 Guaranteed Maximum Price.**

(a) *General.*

(1) *GMP.*

(i) The GMP is the ceiling price described by [FAR 16.403-2](#).

(ii) The GMP is established at contract award. The GMP may be established as one option or as multiple options through separate line items, with a separate GMP amount for each line item.

(iii) The GMP is subject to adjustment under various standard contract clauses, including the changes clause, differing site conditions clause, and suspensions clause.

(iv) The contract file shall contain all documents to support any scope changes including a separate analysis to document the rationale for any upward or downward adjustment to the GMP.

(2) *ECW.*

(i) The proposed ECW incorporated at construction contract award is the target ECW.

(ii) The final ECW should be established prior to completion of the design (i.e. 100 percent construction documents), generally no earlier than completion of 75 percent construction documents.

(iii) The contracting officer shall negotiate the final ECW and incorporate it into the construction contract through a bilateral modification prior to exercising the GMP option.

(3) *CCA.*

(i) The CCA type of allowance may only be used as part of the CMc project delivery method and should not be confused with other types of allowances that may be used with other construction project delivery methods.

(ii) The CCA provides for a contingency relative to a fixed percentage of the ECW, except for the requirements at paragraph (c)(3) of this subsection. The CCA at time of GMP option exercise is subject to negotiation between the contractor and the contracting officer and may be different than the amount at time of contract award.

(iii) The amount of the CCA will depend on the status of design and construction, as well as the complexity and uncertainties of the project. Early phase designs usually include less defined scope and, accordingly, may require a higher initial CCA at time of contract award. Later phase designs may remove uncertainties and reduce risk, allowing for a lower CCA at time of GMP option exercise.

(iv) The CCA shall not exceed 3 percent of the ECW, unless approved in writing by the HCA for a higher amount not to exceed 5 percent of the ECW.

(4) *Fee for the Construction Work.*

- (i) The fee may be proposed per phase of construction if each phase is a separate option.
- (ii) At time of proposal submission, the offeror shall submit a list of the items included within the offeror's home office overhead.
- (iii) At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.
- (iv) The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. The fee may, however be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays.
- (v) Any fee for the construction work associated with a change order shall not be driven by a fixed percentage. The contracting officer should determine whether the profit included, if any, in a contractor's proposal is reasonable, see [FAR 15.404-4](#) for additional guidance. The limitations of GSAR [552.243-71](#), especially markups, still apply for any changes.

(b) *Design Phase.*

- (1) The GMP may be bilaterally modified upward during the design phase only for approved additions to the scope of work.
- (2) The GMP may be bilaterally modified downward during the design phase for deletions to the scope of work.

(c) *Exercising the GMP Option.*

- (1) The GMP option shall not be exercised until the final ECW is established.
- (2) If the sum of the final ECW, CCA, and fee for construction work is less than the GMP as established at contract award or as adjusted in accordance with [FAR Part 43](#), then the contracting officer shall adjust the GMP downward accordingly through a bilateral modification to exercise the GMP option.
- (3) If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with [FAR Part 43](#), then the contracting officer should work with the contractor to identify measures to reduce the overall GMP. Such measures may include reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project.
- (4) The GMP option shall not be exercised if the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with [FAR Part 43](#).

(d) *Construction Phase.*

- (1) After award of the GMP option, changes in scope may be issued as an adjustment to the GMP or as a stand-alone firm-fixed-price line item.
- (2) Any changes in scope after award of the GMP option shall be reflected by a written modification to the construction contract in accordance with [FAR Part 43](#).

(e) *Early Work Package.*

(1) Early work packages (see [536.7105-7](#)) may be used in the procurement that are priced separately or included in the GMP option.

(2) If any early work package exercised reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

*(f) GMP Adjustment.*

(1) Any changes to the total GMP or individual parts of the GMP must be incorporated in the contract through a modification.

(2) Any modification that changes the GMP, including modifications for early work packages and fixed price conversions, must clearly state that it includes a change to the GMP and describe the changes to the individual parts of the GMP components in the modification.

(3) Any modification that changes the total GMP, or individual parts of the GMP, is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per [FAR 15.406](#).

(4) The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify any adjustments to the total GMP, or individual parts of the GMP.

**536.7105-3 Accounting and Auditing Requirements.**

*(a) Cost Accounting Standards.*

(1) Except as provided in paragraph (a)(2) of this subsection or through an exemption at [FAR 30.201-1](#), construction contracts under the CMc project delivery method are subject to the cost accounting standards (CAS) identified in FAR Part 30.

(2) The contracting officer may request a CAS waiver in accordance with the requirements at [FAR 30.201-5](#) and [530.201-5](#).

(3) If CAS applies, the contract clauses identified at [FAR 30.201-4](#) shall be included in the contract.

(4) If a CAS waiver is granted or if CAS does not apply, the contract clause identified at [536.7107\(b\)](#) shall be included in the contract.

*(b) GMP Option Accounting.*

(1) Open Book Accounting. Open book accounting shall be followed for financial tracking of all contract line items that are awarded on a GMP basis. Such financial tracking may be accomplished through an audit in accordance with paragraph (c) of this section.

(2) Payments and Reconciliation. All payments shall be reconciled with the open book accounting records and the schedule of values adjusted, as appropriate. Reconciliation shall occur each month and should be coordinated with monthly progress payments. The reconciliation shall be documented in the contract file.

(c) Auditing Requirements. In accordance with GSAM [542.102\(a\)](#), for any audit services required by

this Subpart [536.71](#), the contracting officer shall first request such services be performed by or through the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing. If the Office of Inspector General declines to perform such an audit, the contracting officer may obtain audit services from a certified public accountant.

#### **536.7105-4 Value Engineering.**

In accordance with [FAR 48.202](#), the clause at [FAR 52.248-3](#) Value Engineering-Construction does not apply to incentive contracts. Accordingly, value engineering, as that term is used and described in FAR Part 48, shall not apply to the CMC project delivery method described in this subpart.

#### **536.7105-5 Shared Savings Incentive.**

(a) General. The incentive is a shared portion of the difference between the final GMP and the final cost of performance. Cost reductions may be realized by the construction contractor as a result of innovations and efficiencies during the construction phase, such as increased labor productivity or strong material subcontract negotiations.

(b) Share Ratio.

(1) Except as provided in paragraph (2) of this subsection, the share ratio for the construction contractor shall range from 30 percent to 50 percent. The share ratio for the construction contractor shall not exceed 50 percent. The complexity of the project and the amount of risk to the construction contractor should be considered when determining the ratio. A project with greater risk to the construction contractor should reflect a greater share ratio for the construction contractor.

(2) Subject to the approval of the HCA, the share ratio may be different than that required under paragraph (b)(1) of this subsection. Any such written approval shall be documented in the contract file.

(c) Incentive Calculation. The incentive amount is calculated in accordance with the clause at [552.236-79](#) Construction-Manager-As-Constructor.

#### **536.7105-6 Allowances.**

(a) Establishing a separate allowance in addition to the CCA is only permitted pursuant to a written determination approved by the contracting director supporting the use of any such allowance.

(b) The written determination for a separate allowance in addition to the CCA shall consider the following:

(1) Alternative contracting structures, such as a separate GMP line item or performing the work as part of the GMP option, and

(2) Ensuring conformance with all applicable rules and procedures relating to allowances, including [FAR 11.702](#).



### **536.7105-7 Early Work Packages.**

(a) Construction services for an early work package must be within the scope of the overall contract.

(b) Early work packages may be part of the initial procurement as a separately priced line item, or the Government and the construction contractor may agree to develop an early work package after award, typically identified toward the beginning of the project.

(c) *Early Work Packages Developed After Award.*

(1) The parties shall bilaterally agree to the scope, schedule, and pricing for any such early work package, and the contract shall be modified in accordance with [FAR Part 43](#).

(2) If any such early work package reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(3) Any modification to the contract for an early work package is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per [FAR 15.406](#).

(d) Early work packages that are firm-fixed-price are not subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

### **536.7105-8 Conversion to Firm-Fixed-Price.**

(a) At any time after completion of 100 percent construction documents, the Government and the construction contractor may bilaterally convert the whole contract to firm-fixed-price.

(b) Conversion to firm-fixed-price may occur after the contingency risks, to be covered by the CCA, have been sufficiently reduced in the best interest of the Government. See [FAR 16.103\(b\)](#) for additional guidance for assessing risk management, profit motive, and timing considerations.

(c) Conversion to firm-fixed-price is only permitted pursuant to a written determination from the contracting officer to the contract file supporting the conversion. The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify the conversion.

(d) The contracting officer shall not agree to a firm-fixed-price in excess of the GMP.

(e) In accordance with [536.7105-3\(c\)](#), the contracting officer shall obtain an independent audit of the construction contractor's costs incurred in the performance of the contract to date.

(f) When evaluating the construction contractor's proposal for firm-fixed-price definitization, the contracting officer should compare the anticipated final cost to the firm-fixed-price being proposed. It may be reasonable for the construction contractor to include a contingency for assuming the risk associated with agreeing to the firm-fixed-price. The contracting officer should evaluate this contingency to ensure that the proposed amount reasonably reflects the remaining risks being assumed by the construction contractor. This evaluation may be informed by the history of the project, the balance of the CCA, and other factors.

(g) The modification to convert to a firm-fixed-price is subject to the requirement to obtain cost and pricing data unless one of the exceptions in [FAR 15.403-1](#) applies.

(h) The modification to convert to a firm-fixed-price is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per [FAR 15.406](#).

(i) Upon converting to a firm-fixed-price, the contract is no longer subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

### **536.7106 Construction Contract Closeout.**

Unless the contract has been converted to a standard firm-fixed-price contract (see [536.7105-8](#))—

(a) The contracting officer shall ensure that the construction contractor's proposal for final settlement is accurate and reliable in accordance with the open book accounting practices of the contract.

(b) In accordance with [536.7105-3\(c\)](#), the contracting officer shall obtain an independent audit of the construction contractor's costs.

### **536.7107 Contract Clauses (FAR DEVIATION).**

(a) *FAR deviation.* GSA has a deviation from FAR [52.216-17](#) that allows use of the clause [552.236-79](#) in lieu of the FAR clause at [52.216-17](#). Insert a clause substantially the same as the clause at [552.236-79](#), Construction-Manager-As-Constructor, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed in lieu of the FAR clause at [52.216-17](#).

(b) Insert a clause substantially the same as the clause at [552.236-80](#), Accounting Records and Progress Payments, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed and cost accounting standards do not apply. This clause is used when the clauses at FAR 52.230-2 Cost Accounting Standards, FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230-6 Administration of Cost Accounting Standards do not apply.