

## GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAR Case 2015-G506, Adoption of Construction Project Delivery Method Involving Early Industry Engagement- Construction Manager as Constructor (CMc)

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM) to adopt an additional project delivery method for construction known as "construction manager as constructor" (CMc).
2. Background. CMc refers to a project management and contracting technique that is one of three predominant methods used for acquiring construction services by GSA<sup>1</sup>. The CMc model used by GSA follows many industry best practices and has worked well for numerous GSA construction procurements. While there is ample guidance on design-bid-build and design-build procurements in the FAR, there is no guidance on CMc procurement. By providing specific contracting guidance on CMc, GSA is adding to our toolbox a major project delivery method that is similar to one commonly used by the private sector and is fundamentally improving the practice of buying construction services within the Federal Government. This move supports the Government's shift toward category management by providing a more robust playbook framework for efficient procurement of construction services. Additionally, incorporating CMc into the GSAR provides centralized guidance to industry that makes it easier to do business with the Government and ensures consistent application of construction project principles across GSA that provides for greater compliance with requirements.
3. Effective date. Date of Signature.
4. Explanation of changes. This amendment includes regulatory and non-regulatory changes. For full text changes of the amendment see Attachment A, GSAM Text, Line-In/Line-Out.

This amendment revises the regulatory language of the following GSAM subparts, changes summarized below.

GSAM 501.1 (Purpose, Authority, Issuance):

- 501.106 – Adds the OMB Control Numbers for new agency unique clauses 552.236-79 Construction-Manager-as-Constructor and 552.236-80 Accounting Records and Progress Payments.

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<sup>1</sup> The other two methods are design-bid-build and design-build.

GSAM 536.1 (General):

- 536.102 – Incorporates a new definition for the construction-manager-as-constructor project delivery method.

GSAM 536.5 (Contract Clauses):

- 536.515 – Prescribes a new alternate III for contracts above the simplified acquisition threshold that use the CMc project delivery method.
- 536.521 – Prescribes a new alternate II for contracts that use the CMc project delivery method.
- 536.571 – Prescribes a new alternate II for contracts that use the CMc project delivery method.

GSAM 536.71 (Construction-Manager-as-Constructor Contracting):

- 536.7101 – Clarifies the scope as the policies and procedures for the use of the CMc project delivery method.
- 536.7102 – Provides a definition for guaranteed maximum price and related elements.
- 536.7103 – Provides policies relating to evaluation factors, price realism, total evaluated price, and release of the Government estimate.
- 536.7104 – Provides procedures for award of separate line items.
- 536.7105 – Provides policies relating to guaranteed maximum price, open book accounting, incentives, allowances, early work packages, and conversion to firm-fixed-price.
- 536.7106 – Provides procedures regarding final settlement and audit for closeout.
- 536.7107 – Prescribes clauses when a CMc project delivery method will be followed.

GSAM 552.2 (Text of Provisions and Clauses):

- 552.236-79 *Construction-Manager-as-Constructor* – Adds new agency unique clause to address CMc requirements including the guaranteed maximum price, conversion to firm-fixed-price, and final settlement.
- 552.236-80 *Accounting Records and Progress Payments* – Adds new agency unique clause to address CMc requirements including auditing accounts and control systems.

This amendment revises the non-regulatory language of the following GSAM subparts, changes summarized below.

GSAM 536.1 (General):

- 536.103 – Provides policies relating to requirements for documentation in the acquisition plan and source selection approach when a CMc project delivery method will be followed.

GSAM 536.2 (Special Aspects of Contracting for Construction):

- 536.203 – Provides policies allowing for the disclosure of prospectus budget information and other specific cost figures.

- 536.204 – Clarifies the information to be disclosed for the magnitude of construction projects when a CMc project delivery method will be followed.
- 536.207 – Clarifies for the CMc project delivery method, the construction contract is a variation of the fixed-price incentive (successive target) contract type.
- 536.208 – Clarifies the applicability of contract types for construction projects under the CMc project delivery method.

5. Cancellations and Rescissions. This order cancels GSA Class Deviation CD-2019-02.



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Attachment A

GSAR Case 2015-G506  
“Adoption of Construction Project Delivery Method Involving Early Industry Engagement”  
Construction Manager as Constructor (CMc)

GSAM Text, Line-In/Line-Out

GSAM Baseline: Change 104 effective 12/02/2019

- Additions to baseline made by proposed rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by proposed rule are indicated by ~~strikethroughs~~
- Additions to baseline made by final rule are indicated by **[bold and underlined text in brackets]**
- Deletions to baseline made by final rule are indicated by ~~strikethroughs and underlined text~~
- Five asterisks (\*\*\*\*\* ) indicate that there are no revisions between the preceding and following sections
- Three asterisks (\*\*\*) indicate that there are no revisions between the material shown within a subsection

**PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM**

**Subpart 501.1—Purpose, Authority, Issuance**

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**501.106 OMB Approval Under the Paperwork Reduction Act.**

GSAR Reference	OMB Control No.
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<b>[552.236-79]</b>	<b>[3090-0320]</b>
<b>[552.236-80]</b>	<b>[9000-0034]</b>

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**PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**Subpart 536.1—General**

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**536.102 Definitions.**

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["Construct on-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.]



### [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.]

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## Subpart 536.2—Special Aspects of Contracting for Construction

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### 536.203 Government Estimate of Construction Cost.

(a) [*Preparation of the Government Estimate.*]

[(1)] A copy of the independent Government estimate [shall] must be submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (~~See paragraphs (b) and (c).~~)

[(2)](b) Before releasing a solicitation amendment that may affect price, a revised Government estimate [shall] must 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) The contracting officer may disclose cost figures in the Government estimate during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price. The overall amount of the Government estimate cannot be disclosed before award. After award, the contracting officer may reveal the independent Government estimated price, upon request, to those firms or individuals who submitted proposals.~~

[(c) *Use of the Government estimate.* The contracting officer may use the Government estimate] (d) 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] must 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.]

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## **Subpart 536.5—Contract Clauses**

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

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[(c) With its Alternate III when the contract amount is expected to be above 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[-]

[(a) W]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.]

### **536.571 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) W]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.]

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## **[Subpart 536.70—Reserved]**

## **[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) ~~is~~ 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. Marked-up costs paid to subcontractors shall be deemed direct costs of the Contractor.~~



**"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. ~~These packages are typically identified toward the beginning of the project.~~ Demolition is an example of an early work package.

**"Estimated Cost of the Work" (ECW)** means the estimated direct cost of the construction work, not including home office overhead. ~~The proposed ECW incorporated at construction contract award is the target ECW. The final ECW is negotiated during the design phase and is incorporated into the construction contract through modification.~~

**"Fee for the Construction Work"** means the ~~is a fixed~~ amount established in the construction contract for all of the contractor's ~~indirect costs, including overhead and profit and home office overhead costs, as described in FAR Part 31,~~ for the construction work. ~~The fee may be proposed per phase of construction if each phase is a separate option.~~

**"Guaranteed Maximum Price" (GMP)** ~~is the ceiling price described in FAR 16.403-2.~~ At construction contract award, ~~the GMP for the construction contract is established as~~ means the sum of the target 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 items 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 in FAR 6.403-2!~~

(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.

(iii) 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% construction documents), generally no earlier than completion of 75% 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 is adjusted to provide~~ provides for a contingency relative to a fixed percentage of the ECW ~~set at contract award~~, except for the requirements at paragraph (c)(2)(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 CCA will cover design errors and omissions that do not form the basis of a change order. Design errors and omissions that do form the basis for a change order will be settled in accordance with GSAR 552.243-71, Equitable Adjustments!~~

(iv) ~~Except as provided in paragraph (a)(3)(v) of this subsection, the CCA should not exceed 3 percent.~~

(v) ~~Subject to the approval of the HCA, the CCA may be different than that required under paragraph (a)(3)(iv) of this subsection. Any such written approval shall be documented in the contract file!~~

(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 for the construction work may only, however be adjusted for changes that~~



are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays that have an impact on schedule.

(v) ~~Any~~The fee for the construction work associated with a ~~scope 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 ~~for the scope change work~~, 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 shall~~ 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. ~~shall reduce the CCA while keeping the GMP amount fixed through a bilateral modification to exercise the GMP option.~~

(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 post 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).

(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 realized by the construction contractor as a result of completing the construction work for less than the GMP. Cost reductions may be realized by the construction contractor as a result of result from 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 552.236-78 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 shall be definitive firm fixed price line items in the contract.~~

(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 ~~are no longer~~ 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% 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.**

(a) 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. This clause is in lieu of the clause at FAR 52.216-17 Incentive Price Revision—Successive Targets.

(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.]

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## **PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 552.2—Text of Provisions and Clauses**

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### 552.236-15 Schedules for Construction Contracts.

As prescribed in 536.515, insert the following clause:

#### SCHEDULES FOR CONSTRUCTION CONTRACTS (DATE)

[Alternate III (DATE) As prescribed in 536.515(c), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

**(c) Submission.**

(1) Within 30 calendar days of contract award, or such other time as may be specified in the contract, the Contractor shall submit the design phase project schedule.

(2) Within 30 calendar days after establishing the final estimated cost of work, the Contractor shall submit the construction phase project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

**(e) Activities.**

(1) The design phase project schedule shall depict all activities necessary to complete the design work, including, as applicable, all submittal and submittal review activities, cost reconciliation, and establishing the estimated cost of work for the construction phase.

(2) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the construction phase work.

(3) The construction phase project schedule shall depict all activities necessary to complete the construction work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(4) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(5) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

**(h) Revisions to the schedule.**

(1) The Contractor should anticipate that the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken. The Contractor understands and acknowledges that the purpose of the review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor proposes a revision to the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities.

(i) **Updates.** Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.]

### 552.236-21 Specifications and Drawings for Construction.

As prescribed in 536.521, insert the following clause:

#### SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (DATE)



[Alternate II (DATE) As prescribed in 536.521(b), add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to the construction documents meaning the 100% complete specifications and construction drawings developed during the design phase.]

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### **552.236-71 Contractor Responsibilities.**

As prescribed in 536.571, insert the following clause:

#### **CONTRACTOR RESPONSIBILITIES (DATE)**

[Alternate II (DATE) As prescribed in 536.571(b), delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), (g), (h) and (i) as follows:

(d) The Contractor shall be responsible for performing the design phase services in accordance with the statement of work. The Contractor shall submit all deliverables and reports in accordance with the statement of work.

(e) The Contractor shall be responsible to review all design information (e.g. draft specifications and drawings) provided. The Contractor shall be responsible for determining that the project as described in the design information is constructible using commercially practicable means and methods; that the construction work is described in the design documents with sufficient completeness to enable pricing of a complete project within the guaranteed maximum price; and that the manner of presentation and organization of information in the design documents enables accurate estimation of the cost of the work.

(f) Prior to establishment of the final estimated cost of work, the Contractor shall bring to the Contracting Officer's attention all instances that it has discovered or has been made aware of where design errors and omissions affect omission of design information affects the Contractor's ability to accurately estimate the cost of the work.

(g) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(h) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(i) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(j) The Contractor is responsible to construct the project in accordance with the drawings and specifications. The final Estimated Cost of the Construction Work (ECW) may be determined based upon incomplete design documents. In those instances in which the drawings and specifications are not complete at the time the final ECW is established, the Contractor shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the final ECW on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources.]

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### **[552.236-79 Construction-Manager-As-Constructor.**

As prescribed in 536.7107(a), insert the following clause:

#### **CONSTRUCTION-MANAGER-AS-CONSTRUCTOR (DATE)**



(a) *General.* Pricing for the Guaranteed Maximum Price (GMP) for the option for construction services shall be subject to the requirements below:

(b) *Definitions.* The following definitions shall apply to this clause:

"Construction-Manager-as-Constructor (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.

"Costs" means allowable direct costs in accordance with FAR Part 31. ~~Marked-up costs paid to subcontractors shall be deemed direct costs of the Contractor.~~

"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 direct cost of the construction work, not including home office overhead.

"Fee for the Construction Work" means the a fixed amount established for all indirect costs, including overhead and 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.

(c) *Guaranteed Maximum Price.* This contract at award includes a GMP.

(d) *Estimated Cost of the Work.* The proposed ECW incorporated into the contract at award is a target ECW. A final ECW is negotiated during the design phase and is incorporated into the contract prior to exercise of the GMP option.

(e) *Final Estimated Cost of the Work.*

(1) *Submission Requirements for Final ECW Proposal.* During the design phase, and at a time agreed by the Contracting Officer, the Contractor shall submit the following:

(i) A detailed statement of all construction costs, including ~~firm-fixed-price~~ early work packages in the performance of the construction work to date;

(ii) A detailed breakdown of home office overhead costs and a statement that the accounting practices used for the allocation of home office overhead on this contract is in accordance with the Contractor's established cost accounting practices;

(iii) A proposed final ECW;

(iv) Sufficient data to support the accuracy and reliability of the estimate;

(v) An explanation of the difference between the proposed final ECW and the target ECW used to establish the GMP; and

(vi) The Contractor's affirmation that:

(A) The Contractor is satisfied that the project as described in the specifications and construction drawings is constructible using commercially practicable means and methods;

(B) The Contractor is satisfied that the construction work has been sufficiently described to enable it to estimate the cost of the work with reasonable accuracy;

(C) The Contractor has disclosed to the Contracting Officer all of its actual knowledge relating to design errors and omissions of design information that may affect the cost of the work; and

(D) The Contractor acknowledges that the final ECW and time established for completion shall not be adjusted on account of cost or time attributable to known design errors and omissions disclosed by the Contractor pursuant to paragraph (e)(1)(v)(C) of this clause. Unknown design errors and omissions that form the basis for a change order may still be settled in accordance with GSAR 552.243-71 Equitable Adjustments.

(2) *Establishment of the Final ECW.* The parties shall negotiate a final ECW based on the data provided under paragraph (e)(1) of this clause. The final ECW shall be established and incorporated into the Contract by bilateral modification. The Contracting Officer will not accept a final ECW proposal that does not include the written affirmation described in this clause. The Contracting Officer will not exercise the GMP option for construction work unless the final ECW has been incorporated into the contract.

(f) *CMc Contingency Allowance.* The CCA shall be \_\_\_\_\_ % of the ECW [Contracting Officer insert percentage amount].

(g) *Shared Savings Incentive.* The Contractor shall be entitled to \_\_\_\_\_ % of the difference between the final GMP and the final cost of performance ~~any cost reductions realized~~ [Contracting Officer insert percentage amount].

(h) *Adjustment of ECW and GMP.* The ECW and GMP shall be subject to adjustment for changes and any other conditions giving rise to entitlement to an adjustment under this contract. The ECW and GMP may shall be adjusted down for deletions to the scope of the construction services through a bilateral modification.



(i) *Adjustment of CCA.* 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 Contractor should work with the Contracting Officer to identify measures to reduce the overall GMP, including reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project. At any time, the parties may agree to a different CCA than the amount expressed at time of contract award. ~~contracting officer will reduce the CCA while keeping the GMP amount fixed. Otherwise, the CCA is adjusted relative to the percentage of the ECW set in paragraph (f) of this clause.~~ Prior to the use of the CCA, the Contractor shall coordinate approval following the procedures identified in the contract. For approved CCA uses, the CCA shall be reduced and the ECW shall be adjusted accordingly.

(j) *Adjustment of the Fee for the Construction Work.* The fee for the construction work may only be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays that have an impact on schedule. The fee for the construction work associated with a scope-change order shall not be driven by a fixed percentage. The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. 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.

(k) *Conversion to Firm-Fixed-Price Prior to Final Settlement.*

(1) *Submission Requirements for Conversion to Firm-Fixed Price.* If the parties agree to negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option, or at the request of the Contracting Officer, the Contractor shall submit the following:

(i) A proposed firm-fixed-price proposal for the completion of the construction work, which shall include all markups, including profit.

(ii) A detailed statement of any costs incurred in the performance of the contract work to date.

(2) *Establishment of Firm-Fixed-Price.*

(i) *Prior to Exercise of GMP Option.* The parties may negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option based on the data provided under paragraph (k)(1) of this clause; provided that the firm-fixed-price shall not exceed the GMP. The Contracting Officer shall have the right, but not the obligation, to bilaterally exercise the GMP option at the firm-fixed-price within 120 calendar days of the establishment of such price.

(ii) *After Exercise of the GMP Option.* At any time prior to final settlement, the Contracting Officer may request that the Contractor provide a firm-fixed-price proposal for the completion of construction work in accordance with paragraph (k)(1) of this clause. Within 60 calendar days of such request, the Contractor shall provide such data. Within 60 calendar days of receipt of the Contractor's proposal, the Contracting Officer shall have the right, but not the obligation, to convert the contract to a firm-fixed-price contract through a bilateral modification at the proposed fixed-price or as otherwise negotiated by the parties; provided that the firm-fixed-price, plus any costs incurred in the performance of the construction work, shall not exceed the GMP.

(iii) If any portion of the contract is converted to a firm-fixed-price, then that portion of the contract is no longer subject to open book accounting, a shared savings incentive, or the need for final settlement. If the contract is not converted to a firm-fixed-price contract, then the final settlement of the Contractor's compensation shall be determined in accordance with paragraph (l) of this clause.

(3) *Payments.* If this contract is converted to a firm-fixed-price contract, the Contractor shall submit a revised schedule of values for the construction work allocating the unpaid balance of the fixed price to the itemized work activities remaining uncompleted, which shall be the basis for remaining progress payments.

(l) *Final Settlement.* The final settlement amount shall consist of the cost of performance and the Contractor's shared savings incentive, if any; provided that in no event shall the final settlement exceed the GMP. The final settlement amount shall be the Contractor's total compensation due under the contract.

(1) *Submission Requirements for Final Settlement Proposal.* The Contractor shall submit a final settlement proposal within 120 days of substantial completion to determine the cost of the construction work, which shall include the following:

(i) A detailed statement of all costs incurred by the Contractor in performing the construction work;

(ii) A firm-fixed-price proposal for the performance of the remaining work, if any, that may be necessary to complete performance of the construction work;

(iii) An executed release of claims, which shall describe any and all exceptions, including a description of any outstanding claims; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) *Determination of the Cost of the Work.* The cost of the construction work shall be the sum of all costs incurred by the Contractor in performing the construction work, the proposed fixed price for performance of remaining work, if any, less the residual value of any Contractor retained inventory. In order to determine the cost of the construction work, the Contractor shall be subject to an audit of the Contractor's records and/or the Contractor's proposal. Establishment of the cost of the construction work shall be subject



to negotiation between the Government and the Contractor. In the event that the parties are unable to reach agreement, the Contracting Officer may unilaterally determine the cost of the construction work, and such determination shall be subject to FAR Clause 52.233-1 Disputes.

(3) *Determination of the Shared Savings Incentive.* If the final cost of performance is equal to or greater than the final GMP, the Contractor is not entitled to any additional compensation. If the final cost of performance is less than the final GMP, the Contractor is entitled to the percentage specified in paragraph (g) of this clause, of the difference between the final GMP and the final cost of performance, as the shared savings incentive.

(m) *Subcontracts.* No subcontract placed under this contract may provide for cost-plus-a-percentage of cost. Any costs incurred by the Contractor as a result of such a subcontract shall not be included in the cost of the construction work or the final settlement.

(n) *Open Book Access.*

(1) At any time prior to converting to firm-fixed-price, the Government and its representatives, including designated auditors and accountants, shall have the right, but not the obligation, to attend any and all project meetings and shall have access to any and all records maintained by the Contractor relating to the contract. The Contractor shall include this requirement for open book access by the Government in its subcontracts for the contract.

(2) After converting to firm-fixed-price, the Government maintains the right to examine records under GSAR Clause 552.215-70.

(o) *Termination.* If this Contract is terminated, the Contractor shall not be entitled to a shared savings incentive.

(p) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.]

### **[552.236-80 Accounting Records and Progress Payments.**

As prescribed in 536.7107(b), insert the following clause:

#### **ACCOUNTING RECORDS AND PROGRESS PAYMENTS (DATE)**

(a) The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this contract. The Contractor's accounting and control systems shall meet Generally Accepted Accounting Principles (GAAP) and provide for the following:

(1) There is proper segregation of direct costs and indirect costs.

(2) There is proper identification and accumulation of direct costs by contract.

(3) There is a labor time distribution system that charges direct and indirect labor appropriately.

(b) The Contractor shall afford access to and shall permit any authorized representatives of the Government to audit, examine and copy any records, documents, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this contract. Records subject to audit, examination, and copying shall include those records necessary to evaluate and verify all direct and indirect costs, including overhead and payroll tax and fringe benefit allocations, as they may apply to costs associated with the contract. The Contractor shall preserve these records for a period of three years after the final payment, or for such longer period as may be required by law.

(c) The records identified in paragraphs (b) of this clause shall be subject to inspection and audit by the Government or its authorized representative for, but not limited to, evaluating and verifying:

(1) Contractor compliance with contract requirements;

(2) Compliance with pricing change orders, invoices, applications for payment, or claims submitted by the contractor or any of its subcontractors at any tier, including vendors and suppliers.

(d) If requested by the Government, the Contractor shall promptly deliver to the Government or its designee copies of all records related to the contract, in a form acceptable to the Government. The Contractor shall provide to the Government or its authorized representative such records maintained in an electronic format in a computer readable format on data disks or suitable alternative computer data exchange formats.

(e) The Government shall have access to the Contractor's facilities, shall be allowed to interview all current and former employees to discuss matters pertinent to the contract, and shall be provided adequate work space, in order to conduct audits and examinations.

(f) If any audit or examination of the Contractor's records discloses total findings resulting in overpricing or overcharges by the Contractor to the Government in excess of one-quarter percent of the total contract billings, the Contractor shall immediately reimburse the Government for the overcharges. The Contractor shall also reimburse the Government for the costs of the audit unless otherwise agreed to by the Government and the Contractor.



(g) The Government shall be entitled to audit all modifications, including lump-sum modifications, to determine whether the proposed costs, as represented by the Contractor and any of its subcontractors, are in compliance with the contract. If it is determined that the costs proposed under a modification, including lump-sum modifications, are not in compliance with the contract, the Government reserves the right to adjust the amount previously approved and included in the modification.

(h) If the Contractor fails to comply with any conditions in this clause, the Contracting Officer may retain a maximum of 10 percent of the amount of each payment request submitted until such deficiencies are corrected.

(i) These requirements regarding accounting records shall not mitigate, lessen nor change any other requirements in the contract regarding audits, payment submissions, records, or records retention.

(j) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.]

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### Subpart 552.3—Provision and Clause Matrixes

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#### 552.300 Scope of subpart.

This subpart consists of a series of matrixes:

(a) One matrix each for supply, service, construction, architect-engineer and simplified acquisition contracts which lists the applicable GSAR provisions and clauses.

(b) One matrix each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

#### Matrix of Provisions and Clauses

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P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
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[C]	[552.236-79]	[536.7107(a)]	[Construction-Manager-as-Constructor]					[WR]		[WR]		
[C]	[552.236-80]	[536.7107(b)]	[Accounting Records and Progress Payments]					[WR]		[WR]		

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