

Subchapter 3036.2 Special Aspects of Contracting for Construction

3036.203 Government estimate of construction costs.

(a) The Government estimate must be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation must be removed only when the estimate is made public in accordance with the instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate must be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation must be removed and the estimate read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

- (1) The overall amount of the Government estimate must not be disclosed prior to award;
- (2) At the time of award, the "For Official Use Only" designation on the Government estimate must be removed; and
- (3) After award, the Government estimate may be revealed, upon request.

3036.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FAR 11.500.

3036.208 Reserved.

3036.209 Construction contracts with architect-engineer firms.

The Head of the Contracting Activity (HCA) or designee no lower than a Senior Executive Service (SES) or flag officer level may approve the award of a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates. Chiefs of the Contracting Offices (COCOs) must submit requests to include: (1) the reason(s) why award to the design firm is required; (2) an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and prospective contractor; and (3) measures to be taken to avoid, neutralize, or mitigate conflicts of interest.

3036.212 Preconstruction orientation.

(b) DHS Form 700-11, "Preconstruction Conference Agenda and Checklist," or a similar checklist, must be used as the agenda of, or checklist for, the preconstruction conference.

3036.212-70 Contracting with the National Institute of Building Sciences.

The National Institute of Building Sciences (NIBS) was chartered in 1974 to provide advice to the public and private sectors on issues involving new building technology and the building regulatory process. Public Law 93-383, Housing and Community Development Act of 1974, specifically authorizes agencies to contract with and accept contracts from the NIBS for specific services where deemed appropriate by the responsible Federal officials involved. NIBS provides assistance or advice on building-related matters.

(b) Section 809(g)(3) of Public Law 93-383 expressly authorizes agencies and departments to contract with NIBS. In this regard, the exception to full and open competition at FAR 6.302-5 may be used, if the contracting officer determines this to be an appropriate exception, to award such contracts. However, the exception to full and open competition at FAR 6.302-1 should be used when it is determined that NIBS, because of its unique capabilities and charter, is the only source that will satisfy the requirement.

(c) The synopsis requirements at FAR 5.2 are applicable unless a waiver is granted pursuant to FAR 5.202(b).

3036.213 Special procedures for sealed bidding in construction contracting.

3036.213-2 Presolicitation notices.

(a) The HCA is authorized to waive the requirement to send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold. In no case shall the authority be delegated below the level of COCO.

3036.213-70 Report of agency construction programs.

(a) *Report.* 29 C.F.R. § 1.4 requires agencies using wage determinations under the Davis-Bacon Act or any of the laws requiring Davis-Bacon labor standards provisions to furnish the Department of Labor (DOL) a report that contains a general outline of its proposed construction programs for the upcoming three fiscal years that includes a list of proposed projects (including those for which options to extend the contract term of an existing construction contract are expected during the period covered by the report); the estimated start date of construction; the anticipated type or types of construction; the estimated cost of construction; the location or locations of construction; and any other project-specific information that the DOL requests. The report must also include notification of any significant changes to previously reported construction programs, such as the delay or cancellation of previously reported projects. Each Component shall submit their report of proposed construction to OCPO-APL by April 1 annually using the format and instructions provided at HSAM Appendix AC.

(b) *Component single point of contact.* Each Component shall designate a single point of contact (POC) responsible for the timeliness and accuracy of planned construction information reported to OCPO. Unless advised otherwise by the Component, the POC is the chief of the procurement policy function within the Component.

(c) *Report format and submission.* Each Component shall model its report after the template provided in HSAM Appendix AC, Template for Report of Agency Construction Programs, and

shall submit the report as an Excel document. Data for each individual FY must be reported on separate Excel worksheets. Negative reports are required. OCPO will consolidate the Component reported data and transmit a collective report to DOL.

(d) *Significant report changes.* During the fiscal year, each Component shall notify OCPO of any significant changes to its proposed construction programs from those outlined in the Component's report. OCPO will notify DOL.