

## **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 Concurrent performance of firm-fixed-price and other types of construction contracts.**

The HCA, without redelegation, is delegated the authority to approve the use of cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features concurrently at the same work site with firm-fixed-price, lump sum, or unit price contracts.

### **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. 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.**

(a) 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 by processing:(1) On-line databases on current developments in building science and technology in areas such as architecture and engineering, products and materials, health and safety, and codes and standards; and(2) Information pertaining to asbestos in public buildings and lead-based paint poisoning, energy efficiency in offices and industrial buildings, and seismic safety of buildings.

(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 proposed Federal construction.**

(a) *Report.* Section 1.4 of the Davis-Bacon Procedural Rules, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, as outlined at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=29:1.1.1.1.2&idno=29>, requires agencies using wage determinations under the Construction Wage Rate Requirements statute, among other statutes, to furnish the Administrator, Department of Labor (DOL), a general outline of its proposed construction programs for the coming fiscal year (FY) indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction.

In a memo entitled “Report of Proposed Construction Programs”, dated January 17, 2017, DOL requested that agencies, if practicable, provide data under this reporting requirement for an additional two (2) FYs. Further, DOL requested that the data include, for all three (3) FYs, details related to projected construction amounts, projected project start and completion dates, and assigned wage determinations. This additional data will assist DOL with its multi-year planning efforts for scheduling wage surveys which will result in more up-to-date and accurate wage determinations.

(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.* Accordingly, Components shall submit a report for the coming FY under this requirement. The Component may, if practicable, also provide information on construction projects for the two additional consecutive FYs. Each Component shall model its report after the template provided in HSAM Appendix AC, Template for Report of Proposed Federal Construction, 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 reported data presented at the beginning of the fiscal year. OCPO will notify DOL.