MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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SUBJECT: FAR and GSAM Class Deviation - Authority to Use Construction Manager as Constructor (CMc) Project Delivery Method

1. Purpose.

This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Manual (GSAM) to authorize use of the construction-manager-as-constructor (CMc) project delivery method. The CMc delivery method is similar to the fixed price incentive (successive target) contract structure with a guaranteed maximum price (GMP).

In particular, this provides PBS approval for revised CMc procedures, for a new Accounting Clause, and for an updated CMc Clause in lieu of FAR 52.216-17.

This class deviation is issued to immediately implement CMc guidance while the GSAM is updated via the rulemaking process.

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 (i.e. design-bid-build, design-build, and construction-manager-as-constructor). The CMc model used by GSA follows industry best practices that have been commonly used in the private sector for many years, and has worked well for numerous GSA construction procurements.

CMc allows for early industry engagement by the construction contractor. A study by the Pankow Foundation1 as well as GSA's own data analysis have shown that this early engagement can provide reduced cost growth, reduced schedule growth and administrative savings, resulting in a net economic burden reduction compared with the other project delivery methods.

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PBS began to consider CMc contracts as a viable alternative to traditional design-bid-build or
design-build delivery methods in 2004, when the GSA Office of Chief Architect assembled a
working group of senior project managers, senior contracting officers, and attorneys to develop
a strategy for implementing the method. This working group developed an initial CMc clause
that was incorporated in CMc contracts from 2006 through 2009 through individual FAR
deviations. After the enactment of the American Recovery and Reinvestment Act of 2009
(ARRA), PBS requested a class deviation for a CMc clause that was approved on June 5, 2009.

The enactment of ARRA increased the number of PBS regions utilizing the CMc project delivery
method, and highlighted the need for additional guidance. The only guidance for the CMc
delivery method at the time was contained in the PBS contract templates. During performance
of projects funded by ARRA, the GSA Office of Inspector General (IG) noted some
inconsistencies in the application of the delivery method. Specifically, the IG voiced concern
that the manner in which CMc contracts were solicited and awarded did not provide adequate
competition. The IG did not suggest that the CMc/GMP concept, itself, was problematic, but
rather emphasized the importance of providing clear guidance on how the delivery method
should be solicited and administered. In response, PBS reviewed the entire CMc program and
developed a new comprehensive policy and training requirements that provided clear guidance
on competition requirements, established a firm policy on changes to the GMP used for CMc,
and addressed the unique administrative requirements of this type of contract.

On February 8, 2011, PBS issued a policy on the use of the CMc project delivery method and
Procurement Instructional Bulletin (PIB) 11-03, Internal Controls for Construction Manager as
Constructor (CMc) Acquisitions, to ensure consistency in CMc implementation. In the
implementation of the corrective action plan, PBS also revised its CMc Solicitation and
Agreement templates and has developed training modules on the correct use of CMc. On April
12, 2012, a revised class deviation for CMc was approved to reflect on these PBS policies.

GSAR Case 2015-G506 was first opened in 2015 to incorporate the CMc requirements into the
GSAM. During ongoing reviews of the current CMc guidance, policies, and clauses, GSA
identified several changes that are needed to enhance the CMc project delivery method, which
are reflected in this updated deviation.

3. Authority.

This class deviation is issued under the authority of FAR 1.404 and GSAM 501.404.

This class deviation is issued following consultation with the Chair of the Civilian Agency
Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

4. Deviation.

See Attachment A for the changes in the GSAM/GSAR text as revised by this deviation.
5. Effective Date.

This deviation is effective immediately and remains in effect until rescinded or incorporated into the GSAM.

6. Cancellation.

Class Deviation SPE-2012-04-12 and Class Deviation SPE-2009-06-05 are hereby cancelled.

7. PBS Guidance.

Upon approval of this deviation, PBS will issue revised policies, contract templates, and training, as appropriate, to align with this deviation.

8. Point of Contact.

Questions regarding this memorandum should be directed to Mr. Tony Hubbard, Senior Policy Advisor, General Services Acquisition Policy Division (MVAC) at Tony.Hubbard@gsa.gov.

Attachment A - GSAM/GSAR Text
PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 536.1—General

536.102 Definitions.

"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.

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, 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

536.203 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. The overall amount of the Government estimate cannot be disclosed before award.

(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)(e)).

(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.

(3) 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 shall 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 maximum 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 536.70—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 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 and planning errors in the final Estimated Cost of the Work (ECW) or other contractor effort.
"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. 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" is a fixed amount established in the construction contract for all of the contractor's indirect costs, including overhead and profit, 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 the sum of the target ECW, the 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 1412 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 should 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 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.
      (ii) 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 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.
      (ii) 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 for a contingency relative to a fixed percentage of the ECW set at contract award, except for the requirements at paragraph (c)(2) of this subsection.
      (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)(v) of this subsection. Any such written approval shall be documented in the contract file.
   (4) Fee for the Construction Work
      (i) The fee for the construction work may only be adjusted for scope changes that have an impact on schedule.
      (ii) The fee for the construction work associated with a scope change 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.
   (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 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 established at contract award, 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 construction work is greater than the GMP established at contract award, then the contracting officer 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 and fee for the construction work is greater than the GMP established at contract award.
   (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 536.7105-3) 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 EW 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 30.201-4, 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 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 536.7105(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.
(3) 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 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 cost reductions realized by the construction contractor as a result of completing the construction work for less than the GMP. Cost reductions may result from improvements in 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.

(c) Early work packages shall be definitive firm-fixed-price line items in the contract.

(d) 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 ECP 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.

(e) Early work packages 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) The contracting officer shall obtain an independent audit of the construction contractor's costs incurred in the performance of the contract to date. Such an audit may be accomplished in accordance with 536.7105-3(c).

(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. In addition, the contracting officer should verify the costs incurred in the performance of the contract to date. 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) The contracting officer shall obtain an independent audit of the construction contractor's costs. Such an audit may be accomplished in accordance with 536.7105-3(c).

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 in lieu of the clauses at FAR 52.230-2 Cost Accounting Standards, FAR 52.230-3Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230-6 Administration of Cost Accounting Standards.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 552.2—Text of Provisions and Clauses

552.236-79 [Reserved]

[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 to cover reimbursable costs during construction that are not the basis of a change order.
"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.
"Estimated Cost of the Work" (ECW) means the estimated direct cost of the construction work.
"Fee for the Construction Work" means a fixed amount for all indirect costs, including overhead and profit.
"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 firm-fixed-price early work packages involved in the performance of the construction work to date;
      (ii) A proposed final ECW;
      (iii) Sufficient data to support the accuracy and reliability of the estimate;
      (iv) An explanation of the difference between the proposed final ECW and the target ECW used to establish the GMP; and
      (v) 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 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 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 552.204-71 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) CM 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 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 shall be adjusted down for deletions to the scope of the construction services through a bilateral modification.
   (l) Adjustment of CCA. If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP established at contract award, then the 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.
   (j) Adjustment of the Fee for the Construction Work. The fee for the construction work may only be adjusted for scope changes that have an impact on schedule. The fee for the construction work associated with a scope change shall not be driven by a fixed percentage.
   (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 90 calendar days of receipt of the Contractor's proposal, the Contracting Officer shall have the right, but not the obligation, to convert 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 (f) 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.

(i) 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 525.215-70.

(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 [Reserved]

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, 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 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;
3. 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;
4. 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;
5. 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;
6. 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;
7. 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;
8. 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;
9. The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

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