

# Subpart 36.5 - Contract Clauses

Parent topic: [Part 36 - Construction and Architect-Engineer Contracts](#)

## 36.500 Scope of subpart.

(a) This subpart prescribes provisions and clauses for insertion in *solicitations* and contracts for—

(1) *Construction*; and

(2) Dismantling, demolition, or removal of improvements contracts.

(b) Provisions and clauses prescribed elsewhere in the Federal *Acquisition* Regulation (FAR) *shall* also be used in such *solicitations* and contracts when the conditions specified in the prescriptions for the provisions and clauses are applicable.

## 36.501 Performance of work by the contractor.

(a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor *shall* be required to perform a significant part of the contract work with its own forces. The contract *shall* express this requirement in terms of a percentage that reflects the minimum amount of work the contractor *must* perform with its own forces. This percentage is (1) as high as the *contracting officer* considers appropriate for the project, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work, and (2) ordinarily not less than 12 percent unless a greater percentage is required by law or agency regulation. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and *should* not normally be considered in establishing the amount of work required to be performed by the contractor.

(b) The *contracting officer* *shall* insert the clause at [52.236-1](#), Performance of Work by the Contractor, in *solicitations* and contracts, except those awarded pursuant to [subparts 19.5](#), [19.8](#), [19.13](#), [19.14](#), or [19.15](#) when a fixed-price *construction* contract is contemplated and the contract amount is expected to exceed \$2 million. The *contracting officer* *may* insert the clause in *solicitations* and contracts when a fixed-price *construction* contract is contemplated and the contract amount is expected to be \$2 million or less.

## 36.502 Differing site conditions.

The *contracting officer* *shall* insert the clause at [52.236-2](#), Differing Site Conditions, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* *may* insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.503 Site investigation and conditions affecting the work.**

The *contracting officer* shall insert the clause at [52.236-3](#), Site Investigation and Conditions Affecting the Work, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.504 Physical data.**

The *contracting officer* shall insert the clause at [52.236-4](#), Physical Data, in *solicitations* and contracts when a fixed-price *construction* contract is contemplated and physical data (*e.g.*, test borings, hydrographic data, weather conditions data) will be furnished or made available to *offerors*.

### **36.505 Material and workmanship.**

The *contracting officer* shall insert the clause at [52.236-5](#), Material and Workmanship, in *solicitations* and contracts for *construction* contracts.

### **36.506 Superintendence by the contractor.**

The *contracting officer* shall insert the clause at [52.236-6](#), Superintendence by the Contractor, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.507 Permits and responsibilities.**

The *contracting officer* shall insert the clause at [52.236-7](#), Permits and Responsibilities, in *solicitations* and contracts when a fixed-price or cost-reimbursement *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

### **36.508 Other contracts.**

The *contracting officer* shall insert the clause at [52.236-8](#), Other Contracts, in *solicitations* and

contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.**

The *contracting officer* shall insert the clause at [52.236-9](#), Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.510 Operations and storage areas.**

The *contracting officer* shall insert the clause at [52.236-10](#), Operations and Storage Areas, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

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

The *contracting officer* shall insert the clause at [52.236-11](#), Use and Possession Prior to Completion, in *solicitations* and contracts when a fixed-price *construction* contract is contemplated and the contract award amount is expected to exceed the *simplified acquisition threshold*. This clause may be inserted in *solicitations* and contracts when the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.512 Cleaning up.**

The *contracting officer* shall insert the clause at [52.236-12](#), Cleaning Up, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and

contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*.

### **36.513 Accident prevention.**

(a) The *contracting officer shall* insert the clause at [52.236-13](#), Accident Prevention, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer may* insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*. If the contract will involve work of a long duration or hazardous nature, the *contracting officer shall* use the clause with its Alternate I.

(b) The *contracting officer shall* insert the clause or the clause with its Alternate I in *solicitations* and contracts when a contract for services to be performed at Government facilities (see 48 CFR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The *contracting officer should* inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

### **36.514 Availability and use of utility services.**

The *contracting officer shall* insert the clause at [52.236-14](#), Availability and Use of Utility Services, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites, and the *contracting officer* decides (a) that the existing utility system(s) is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the *contracting officer shall* list the available utilities in the contract.

### **36.515 Schedules for construction contracts.**

The *contracting officer may* insert the clause at [52.236-15](#), Schedules for Construction Contracts, in *solicitations* and contracts when a fixed-price *construction* contract is contemplated, the contract amount is expected to exceed the *simplified acquisition threshold*, and the period of actual work performance exceeds 60 days. This clause *may* also be inserted in such *solicitations* and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause *should* not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

## **36.516 Quantity surveys.**

The *contracting officer* may insert the clause at [52.236-16](#), Quantity Surveys, in *solicitations* and contracts when a fixed-price *construction* contract providing for unit *pricing* of items and for payment based on quantity surveys is contemplated. If it is determined at a level above that of the *contracting officer* that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, the clause *shall* be used with its *Alternate*.

## **36.517 Layout of work.**

The *contracting officer* shall insert the clause at [52.236-17](#), Layout of Work, in *solicitations* and contracts when a fixed-price *construction* contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance.

## **36.518 Work oversight in cost-reimbursement construction contracts.**

The *contracting officer* shall insert the clause at [52.236-18](#), Work Oversight in Cost-Reimbursement Construction Contracts, in *solicitations* and contracts when a cost-reimbursement *construction* contract is contemplated.

## **36.519 Organization and direction of the work.**

The *contracting officer* shall insert the clause at [52.236-19](#), Organization and Direction of the Work, in *solicitations* and contracts when a cost-reimbursement *construction* contract is contemplated.

## **36.520 Contracting by negotiation.**

The *contracting officer* shall insert in *solicitations* for *construction* the provision at [52.236-28](#), Preparation of Offers-Construction, when *contracting* by negotiation.

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

The *contracting officer* shall insert the clause at [52.236-21](#), Specifications and Drawings for Construction, in *solicitations* and contracts when a fixed-price *construction* contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer* may insert the clause in *solicitations* and contracts when a fixed-price *construction* or a fixed-price contract for

dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the *simplified acquisition threshold*. When the Government needs record drawings, the *contracting officer shall*-

- (a) Use the clause with its AlternateI, if reproducible *shop drawings* are needed; or
- (b) Use the clause with its AlternateII, if reproducible *shop drawings* are not needed.

### **36.522 Preconstruction conference.**

If the *contracting officer* determines it *may* be desirable to hold a preconstruction conference, the *contracting officer shall* insert a clause substantially the same as the clause at [52.236-26](#), Preconstruction Conference, in *solicitations* and fixed price contracts for *construction* or for dismantling, demolition or removal of improvements.

### **36.523 Site visit.**

The *contracting officer shall* insert a provision substantially the same as the provision at [52.236-27](#), Site Visit (*Construction*), in *solicitations* which include the clauses at [52.236-2](#), Differing Site Conditions, and [52.236-3](#), Site Investigations and Conditions Affecting the Work. AlternateI *may* be used when an organized site visit will be conducted.