

# **PART 436 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

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## **Subpart 436.2 - Special Aspects of Contracting for Construction**

### **436.201 Evaluation of contractor performance.**

*Preparation of performance evaluation reports.* In addition to the requirements of FAR 36.201, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activity's reasonable estimate of services to be ordered exceeds \$500,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

### **436.203 Government estimate of construction costs.**

For acquisitions using sealed bid procedures, the contracting officer may disclose the overall amount of the Government's estimate of construction costs following identification of the responsive bid most advantageous to the Government; verification of that bid's price reasonableness; and verification of the bidder's responsibility. For acquisitions using other than sealed bid procedures (e.g., negotiation), the contracting officer may disclose the overall amount of the estimate after contract award.

### **436.204 Disclosure of the magnitude of construction projects.**

In the case of indefinite-delivery type contracts, the reasonable estimate of work to be done or the maximum in the solicitation, both including all options, is to be used to select the price range. Contracting officers may elect to use both a price range for the base period of services and the total, inclusive of options, to best describe the magnitude of the solicitation.

## **436.205 Statutory cost limitations.**

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In this case, the contracting officer shall insert the provision at 452.236-70, Additive or Deductive Items, in solicitations for construction.

(b) In the alternative to the process in paragraph (a) of this section, the contracting officer may use the policies and procedures found in FAR 17.2.

## **436.209 Construction contracts with architect-engineer firms.**

The head of the contracting activity (HCA) is authorized to approve the award of a contract to construct a project, in whole or in part, to the firm (inclusive of its subsidiaries or affiliates) that designed the project.

## **436.213 Special procedures for sealed bidding in construction contracting.**

### **436.213-2 Presolicitation notices.**

The authority to waive a presolicitation notice is restricted to the HCA.

## **Subpart 436.3 [Reserved]**

## **Subpart 436.5 - Contract Clauses**

### **436.500 Scope of subpart.**

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the simplified acquisition threshold. The contracting officer may use the clauses if the contract amount is expected to be within the simplified acquisition threshold.

### **436.571 Prohibition against the use of lead-based paint.**

The contracting officer shall insert the clause at 452.236-71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

#### **436.572 Use of premises.**

The contracting officer shall insert the clause at 452.236-72, Use of Premises, if the contractor will be permitted to use land or premises administered by USDA.

#### **436.573 Archeological or historic sites.**

The contracting officer shall insert the clause at 452.236-73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

#### **436.574 Control of erosion, sedimentation, and pollution.**

The contracting officer shall insert the clause at 452.236-74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls in the performance of work. Use of the clause is optional in service contracts for on-the-ground e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

#### **436.575 Maximum workweek-construction schedule.**

The contracting officer shall insert the clause at 452.236-75, Maximum Workweek-Construction Schedule, if the clause at FAR 52.236-15 is used and the contractor's work schedule is restricted by access to the facility or must be coordinated with the schedule of contract administration personnel.

#### **436.576 Samples and certificates.**

The contracting officer shall insert the clause at 452.236-76, Samples and Certificates, in all contracts.

#### **436.577 Emergency response.**

The contracting officer may insert the clause at 452.236-77, Emergency Response, in construction contracts awarded for the Forest Service.

#### **436.578 Contract clause.**

Insert the clause at 452.236-78, *Fire Suppression and Liability* in solicitations and contracts for Integrated Resource Service Contracts (IRSC) awarded for the Forest Service.

## **436.579 Opted timber sale road requirements.**

The contracting officer shall insert the clause at 452.236-79, Opted Timber Sale Road Requirements, in road construction contracts resulting from a timber sale turnback.

## **Subpart 436.6 - Architect-Engineer Service**

### **436.601 Policy.**

#### **436.601-3 Applicable contracting procedures.**

The technical official's listing of areas where recovered materials cannot be used shall be referred to the contracting activity's official designated in accordance with FAR 23.404. A copy of the listing and of any approval or disapproval by that official is to be retained in the solicitation file.

### **436.602 Selection of firms for architect-engineer contracts.**

#### **436.602-1 Selection criteria.**

The HCA is authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

#### **436.602-2 Evaluation boards.**

HCA's shall establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602-2. The procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

#### **436.602-3 Evaluation board functions.**

The selection report required in FAR 36.602-3(d) shall be prepared for the approval of the HCA. The HCA may authorize an acquisition official above the level of the contracting officer to execute the required approval.

#### **436.602-4 Selection authority.**

(a) The HCA shall serve as the selection authority in accordance with FAR 36.602-4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

(b) A copy of the final selection, inclusive of the supporting documents, shall be provided to the contracting officer and maintained in the solicitation file.

### **436.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

The HCA may include either or both procedures in FAR 36.602-5 in the procedures for evaluation boards.

### **436.603 Collecting data on and appraising firms' qualifications.**

(a) HCA's which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually.

### **436.604 Performance evaluation.**

*Preparation of performance evaluation reports.* (a) In addition to the requirements of FAR 36.604, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activities reasonable estimate of services to be ordered exceeds \$25,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

(b) The contracting officer may require a performance evaluation report on the work done by the architect-engineer after the completion of or during the construction of the designed project.

### **436.605 Government cost estimate for architect-engineer work.**

The contracting officer may release the Government's total cost estimate in accordance with FAR 36.605(b).

### **436.609 Contract clauses.**

#### **436.609-1 Design within funding limitations.**

(a) Should the head of the contracting activity appoint a designee to make the determination in FAR 36.609-1(c)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

(b) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.609-1(c)(2) or (3).

(c) A copy of the determinations described in paragraph (b) and (c) of this section shall be maintained in the contract file.

#### **436.670 Firms ineligible for award - construction.**

The contracting officer shall insert the clause at 452.236-80, Firms Ineligible For Award - Construction, in the contract for architect-engineering services except as provided in FAR 36.209 and AGAR 436.209.