552.236-79 Construction-Manager-As-Constructor.

As prescribed in 536.7107 (a), insert a clause substantially the same as the following clause:

Construction-Manager-As-Constructor. (JAN 2020)(Deviation FAR 52.216-17)

(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 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, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

“Cost” means allowable costs in accordance with FAR Part 31.

“Cost of Performance” means the final sum of cost of the construction work and fee for the construction work.

“Early Work Package” means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

“Estimated Cost of the Work (ECW)” means the estimated cost of the construction work, not including home office overhead.

“Fee for the Construction Work” means the amount established for the contractor's profit and home office overhead costs, as described in FAR Part 31, for the construction work.

“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 construction costs, including early work packages in the performance of the construction work to date;

(ii)A detailed breakdown of home office overhead costs and a statement that the accounting practices used for the allocation of home office overhead on this contract is in accordance with the

Contractor's established cost accounting practices;

(iii)A proposed final ECW;

(iv)Sufficient data to support the accuracy and reliability of the estimate;

(v)An explanation of the difference between the proposed final ECW and the target ECW used to establish the GMP; and

(vi)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 design errors and omissions 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 errors and 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 552.243-71 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) *CMc Contingency Allowance.* The CCA shall be____ percent of the ECW [*Contracting Officer insert percentage amount*].

(g) *Shared Savings Incentive.* The Contractor shall be entitled to ____ percent of the difference between the final GMP and the final cost of performance [*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 may be adjusted down for deletions to the scope of the construction services through a bilateral modification.

(i) *Adjustment of CCA.* If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the Contractor should work with the Contracting Officer to identify measures to reduce the overall GMP, including reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project. At any time, the parties may agree to a different CCA than the amount expressed at time of contract award. Prior to the use of the CCA, the Contractor shall coordinate approval following the procedures identified in the contract. For approved CCA uses, the CCA shall be reduced and the ECW shall be adjusted accordingly.

(j) *Adjustment of the Fee for the Construction Work.* The fee for the construction work may be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays. The fee for the construction work associated with a change order shall not be driven by a fixed percentage. The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(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 60 calendar days of such request, the Contractor shall provide such data. Within 60 calendar days of receipt of the Contractor's proposal, the Contracting Officer shall have the right, but not the obligation, to convert the contract 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 (l) 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.

(l) *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 552.215-70.

(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.

(End of clause)

Parent topic: 552.236 [Reserved]