352.236-70 Design-Build Contracts.

As prescribed in HHSAR 336.570(a), the Contracting Officer shall insert the following clause:

Design-Build Contracts (DEC 2015)

(a) *General.*

(1) The contract constitutes and defines the entire agreement between the Contractor and the Government. This contract includes the standard or special contract clauses and schedules included at the time of award. This contract incorporates by reference:

(i) The solicitation in its entirety (with the exception of instructions to offerors and evaluation criteria which do not become part of the award document);

(ii) The specifications and statement of work;

(iii) All drawings, cuts and illustrations, included in the solicitation and any amendments during all proposal phases leading up to award;

(iv) Exhibits and other attachments; and

(v) The successful Offeror's accepted proposal.

(2) In the event of conflict or inconsistency between any of the requirements of the various portions of this contract, precedence shall be given in the following order:

(i) Betterments: Any portions of the Offeror's proposal which exceed the requirements of the solicitation and which go beyond repair and improve the value of the property.

(ii) The contract clauses and schedules included during the solicitation or at the time of award.

(iii) All requirements (other than betterments) of the accepted proposal.

(iv) Any design products, including but not limited to plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, *etc.* These are “deliverables” under the contract and are not part of the contract itself.

(3) Design products must conform to all requirements of the contract, in the order of precedence stated here.

(b) *Responsibility of the contractor for design.*

(1) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

(2) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this

contract or of any cause of action arising out of the performance of this contract. The Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of these services furnished under this contract.

(3) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(4) If the Contractor is comprised of more than one legal entity each such entity shall be jointly and severally liable with respect to all rights and remedies of the Government.

(c) *Sequence of design—construction.*

(1) After receipt of the Contract Award, the Contractor shall initiate design, comply with all design submission requirements, and obtain Government review of each submission. No construction may be started until the Government reviews the Final Design submission and determines it satisfactory for purposes of beginning construction. The Contracting Officer will notify the Contractor when the design is cleared for construction. The Government will not grant any time extension for any design resubmittal required when, in the opinion of the Contracting Officer, the initial submission failed to meet the minimum quality requirements as set forth in the Contract.

(2) If the Government allows the Contractor to proceed with limited construction based on pending minor revisions to the reviewed Final Design submission, no payment will be made for any completed or in-progress construction related to the pending revisions until they are completed, resubmitted, and are satisfactory to the Government.

(3) No payment will be made for any completed or in-progress construction until all required submittals have been made, reviewed, and are satisfactory to the Government.

(d) *Constructor's role during design.* The Contractor's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this contract. In addition to the typical required construction activities, the constructor's involvement includes, but is not limited to actions such as: integrating the design schedule into the Master Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits, if any, allowed in the contract), ensuring constructability and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the construction Quality Control (QC) program with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation. The Contractor shall require and manage the active involvement of key trade subcontractors in the above activities.

(e) *Preconstruction conference.*

(1) A preconstruction conference will be arranged by the Contracting Officer after award of contract and before commencement of work. The Contracting Officer or designated representative will notify the Contractor of the time, date, and location for the meeting. At this conference, the Contractor shall be oriented with respect to Government procedures and line of authority, contractual, administrative, and construction matters.

(2) The Contractor shall bring to this conference, in completed form, a Certificate of Insurance, plus the following items in either completed or draft form:

(i) Accident Prevention Plan;

(ii) Quality Control Plan;

(iii) Letter Appointing Superintendent;

(iv) Transmittal Register;

(v) Power of Attorney and Certified Copy of Resolution;

(vi) Network Analysis System, (when identified in the contract schedule as applicable);

(vii) List of Subcontractors;

(viii) SF 1413;

(ix) Performance and Payment Bonds; and

(x) Schedule of Values.

(3) A letter of record will be written documenting all items discussed at the conference, and a copy will be furnished by the Contracting Officer to all in attendance.

(f) *Payment for design under fixed-price design-build contracts.*

(1) The Contracting Officer may approve progress payments for work performed during the project design phase up to the maximum amount of ____ (*Contracting Officer to insert percent figure. If none stated, the amount is four (4) percent*) percent of the contract price.

(2) Contractor invoices for payment must be accompanied by satisfactory documentation supporting the amounts for which payments are requested. Progress payments approved by the Contracting Officer during the project design phase in no way constitute an acceptance of functional and aesthetic design elements nor acceptance of a final settlement amount in the event of a buy-out nor a waiver of any contractual requirements.

(g) *Unscheduled jobsite shutdowns.* Due to security reasons during the life of this contract the Government may on an unscheduled basis require the contractor to shut down its jobsite for 2 days per year at no additional cost. This shall not constitute a suspension of work under FAR 52.242-14, Suspension of Work

(End of clause)

Alternate I (DEC 2015).

When Fast Track procedures are being used, replace paragraph (c) of the basic clause with the following:

(c) *Sequence of design build.*

(1) After receipt of the Contract Award the Contractor shall initiate design, comply with all design submissions requirements and obtain Government review of each submission. The contractor may begin construction on portions of the work for which the Government has reviewed the final design submission and has determined satisfactory for purposes of beginning construction. The Contracting Officer will notify the Contractor when the design is cleared for construction. The Government will

not grant any time extension for any design resubmittal required when, in the opinion of the Contracting Officer, the initial submission failed to meet the minimum quality requirements as set forth in the Contract.

(2) If the Government allows the Contractor to proceed with the construction based on pending minor revisions to the reviewed Final Design submission, no payment will be made for any in-place construction related to the pending revisions until they are completed, resubmitted, and are satisfactory to the Government.

(3) No payment will be made for any in-place construction until all required submittals have been made, reviewed, and are satisfactory to the Government.

(End of clause)

Parent topic: Subpart 352.2—Texts of Provisions and Clauses