

**36.204 Disclosure of the magnitude of construction projects.**

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

- (a) Less than \$25,000.
- (b) Between \$25,000 and \$100,000.
- (c) Between \$100,000 and \$250,000.
- (d) Between \$250,000 and \$500,000.
- (e) Between \$500,000 and \$1,000,000.
- (f) Between \$1,000,000 and \$5,000,000.
- (g) Between \$5,000,000 and \$10,000,000.
- (h) More than \$10,000,000.

**36.205 Statutory cost limitations.**

(a) Contracts for construction shall not be awarded at a cost to the Government—

(1) In excess of statutory cost limitations, unless applicable limitations can be and are waived in writing for the particular contract; or

(2) Which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization.

(b) Solicitations containing one or more items subject to statutory cost limitations shall state (1) the applicable cost limitation for each affected item in a separate schedule; (2) that an offer which does not contain separately-priced schedules will not be considered; and (3) that the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

(c) The Government shall reject an offer if its prices exceed applicable statutory limitations, unless laws or agency procedures provide pertinent exemptions. However, if it is in the Government's interest, the contracting officer may include a provision in the solicitation which permits the award of separate contracts for individual items whose prices are within or not subject to applicable statutory limitations.

(d) The Government shall also reject an offer if its prices are within statutory limitations only because it is materially unbalanced. An offer is unbal-

anced if its prices are significantly less than cost for some work, and overstated for other work.

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 62 FR 237, Jan. 2, 1997]

**36.206 Liquidated damages.**

The contracting officer must evaluate the need for liquidated damages in a construction contract in accordance with 11.502 and agency regulations.

[48 FR 42356, Sept. 19, 1983, as amended at 60 FR 48249, Sept. 18, 1995; 65 FR 46066, July 26, 2000]

**36.207 Pricing fixed-price construction contracts.**

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis (when a unit price is paid for a specified quantity of work units), or (3) using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

(1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(3) Estimated quantities of work required may change significantly during construction; or

(4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.