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Parent topic: Federal Acquisition Regulation

36.000 Scope of part.

This part prescribes policies and procedures peculiar to *contracting* for *construction* and *architect-engineer services*. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

36.001 Definitions.

As used in this part-

Construction and demolition materials and debris means waste materials and debris generated during *construction*, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure.

Diverting means redirecting materials from disposal in landfills or incinerators to recycling or recovery, excluding diversion to waste-to-energy facilities.

Modernization project means a project that includes the comprehensive replacement or restoration of virtually all *major systems*, interior finishes (such as ceilings, partitions, doors, and floor finishes), and building features.

Subpart 36.1 - General

36.101 Applicability.

(a) *Construction* and architect-engineer *contracts* are subject to the requirements in other parts of this regulation, which *shall* be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this

regulation, this part 36 *shall* take precedence if the *acquisition* of *construction* or *architect-engineer services* is involved.

(c) A *contract* for both *construction* and *supplies* or services *shall* include-

(1) Clauses applicable to the predominant part of the work (see subpart 22.4), or

(2) If the *contract* is divided into parts, the clauses applicable to each portion.

36.102 Definitions.

As used in this part-

Contract is intended to refer to a *contract* for *construction* or a *contract* for *architect-engineer services*, unless another meaning is clearly intended.

Design means defining the *construction* requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the *construction* cost estimate.

Design-bid-build means the traditional delivery method where *design* and *construction* are sequential and contracted for separately with two *contracts* and two contractors.

Design-build means combining *design* and *construction* in a single *contract* with one contractor.

Firm in conjunction with *architect-engineer services*, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

Plans and specifications means drawings, specifications, and other data for and preliminary to the *construction*.

Record drawings means drawings submitted by a contractor or subcontractor at any tier to show the *construction* of a particular structure or work as actually completed under the *contract*.

Two-phase design-build selection procedures is a selection method in which a limited number of *offerors* (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see subpart 36.3).

36.103 Methods of contracting.

(a) The *contracting officer shall* use sealed bid procedures for a *construction contract* if the conditions in 6.401(a) apply, unless the *contract* will be performed outside the *United States* and its *outlying areas*. (See 6.401(b)(2).)

(b) *Contracting officers shall* acquire *architect-engineer services* by negotiation, and select sources in accordance with applicable law, subpart 36.6, and agency regulations.

36.104 Policy.

(a) Unless the traditional *acquisition* approach of *design-bid-build* established under 40 U.S.C. chapter 11, Selection of Architects and Engineers, or another *acquisition* procedure authorized by law is used, the *contracting officer shall* use the two-phase selection procedures authorized by 10 U.S.C. 3241 or 41 U.S.C.3309 when entering into a *contract* for the *design* and *construction* of a public building, facility, or work, if the *contracting officer* makes a determination that the procedures are appropriate for use (see subpart 36.3). Other *acquisition* procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the *design-build* process described in 10 U.S.C. 2862.

(b) Agencies *shall* implement high-performance sustainable building *design*, *construction*, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices so as to—

(1) Ensure that—

(i) All new *construction* and modernization projects greater than 25,000 gross square feet are designed, constructed, and maintained to meet and, wherever practicable, exceed Federal sustainable *design* and operations principles for new *construction* and modernization projects in accordance with the Council on Environmental Quality's Guiding Principles for Sustainable Federal Buildings and Associated Instructions (Guiding Principles) (available at https://www.sustainability.gov/pdfs/guiding_principles_for_sustainable_federal_buildings.pdf); and

(ii) All renovation projects of existing Federal buildings *must* use, to the greatest extent technically feasible and practicable, Federal sustainable *design* and operations principles for existing buildings in accordance with the Guiding Principles;

(2) Identify alternatives to renovation that reduce existing assets' deferred maintenance costs;

(3) Ensure that rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and

(4) Ensure *pollution prevention* and eliminate waste by diverting at least 50 percent of non-hazardous *construction and demolition materials and debris*.

(c)

(1) Agencies *shall* require the use of a project labor agreement for Federal *construction* projects with a total estimated *construction* cost at or above $35 million, unless an exception applies (see subpart 22.5).

(2) *Contracting officers* conducting *market research* for Federal *construction contracts*, valued at or above the threshold in paragraph (c)(1) of this section, *shall* ensure that the procedures at 10.002(b)(1) involve a current and proactive examination of the market conditions in the project area to determine national, regional, and local entity interest in participating on a project that requires a project labor agreement, and to understand the availability of unions, and unionized and non-unionized contractors. *Contracting officers may* coordinate with agency labor advisors, as appropriate.

Subpart 36.2 - Special Aspects of Contracting for Construction

36.201 Evaluation of contractor performance.

See 42.1502(e) for the requirements for preparing *past performance* evaluations for *construction* contracts.

36.202 Specifications.

(a) *Construction* specifications *shall* conform to the requirements in part 11 of this regulation.

(b) Whenever possible, *contracting officers shall* ensure that references in specifications are to widely recognized standards or specifications promulgated by governments, industries, or technical societies.

(c) When "brand name or equal" descriptions are necessary, specifications *must* clearly identify and describe the particular physical, functional, or other characteristics of the brand-name items which are considered essential to satisfying the requirement.

36.203 Government estimate of construction costs.

(a) An independent Government estimate of *construction* costs *shall* be prepared and furnished to the *contracting officer* at the earliest practicable time for each proposed contract and for each *contract modification* anticipated to exceed the *simplified acquisition threshold*. The *contracting officer may* require an estimate when the cost of required work is not anticipated to exceed the *simplified acquisition threshold*. The estimate *shall* be prepared in as much detail as though the Government were competing for award.

(b) When two-step sealed bidding is used, the independent Government estimate *shall* be prepared when the contract requirements are definitized.

(c) Access to information concerning the Government estimate *shall* be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule *may* be made during contract negotiations to allow the *contracting officer* to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government’s estimate *shall* not be disclosed except as permitted by agency regulations.

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

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.

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.

36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features *shall* not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the *head of the contracting activity*.

36.209 Construction contracts with architect-engineer firms.

No contract for the *construction* of a project *shall* be awarded to the firm that designed the project or its subsidiaries or *affiliates*, except with the approval of the *head of the agency* or authorized representative.

36.210 Inspection of site and examination of data.

The *contracting officer should* make appropriate arrangements for prospective *offerors* to inspect the work site and to have the opportunity to examine data available to the Government which *may* provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous *construction*. The data *should* be assembled in one

place and made available for examination. The *solicitation should* notify *offerors* of the time and place for the site *inspection* and data examination. If it is not feasible for *offerors* to inspect the site or examine the data on their own, the *solicitation should* also designate an individual who will show the site or data to the *offerors*. Significant site information and the data *should* be made available to all *offerors* in the same manner, including information regarding any utilities to be furnished during *construction*. A record *should* be kept of the identity and affiliation of all *offerors*' representatives who inspect the site or examine the data.

36.211 Distribution of advance notices and solicitations.

(a) Advance notices and *solicitations should* be distributed to reach as many prospective *offerors* as practicable. *Contracting officers may* send notices and *solicitations* to organizations that maintain, without charge to the public, display rooms for the benefit of prospective *offerors*, subcontractors, and material suppliers. If requested by such organizations, this *may* be done for all or a stated class of *construction* projects on an annual or semiannual basis. *Contracting officers may* determine the geographical extent of distribution of advance notices and *solicitations* on a case-by-case basis.

(b) As required by 15 U.S.C. 644(w), the *contracting officer shall* transmit to the *Governmentwide point of entry (GPE*) a notice (see 5.205(h), in *solicitation* notices posted at the GPE for *construction* contracts anticipated to be awarded to a small business pursuant to part 19. The notice *shall* include certain information regarding the agency's definitization of equitable adjustments for *change orders* under *construction* contracts. This information includes:

(1) A description of agency policies or procedures, in addition to that outlined in FAR 43.204, that apply to definitization of equitable adjustments for *change orders* under *construction* contracts. This description *may* be provided in a notice by including an address of an agency-specific, publicly accessible website containing this information. If no agency-specific additional policies and procedures exist, the notice *shall* include a statement to that effect.

(2) Data on the agency's *past performance*, for the prior 3 fiscal years, regarding the time required to definitize equitable adjustments for *change orders* under *construction* contracts (see 43.204). If fewer than 3 fiscal years of data are available, agencies *shall* provide data for the number of fiscal years that are available. Data *shall* be provided in the *solicitation* notice as shown in the following table, or provide the address of an agency-specific, publicly accessible website containing this information. An adequate *change order* definitization proposal *shall* contain sufficient information to enable the *contracting officer* to conduct meaningful analyses and audits of the information contained in the proposal.

Table 1 to Paragraph (b)(2)

Time to definitize after receipt of an adequate *change order* definitization proposal under *construction* contracts	Number of *change order* proposals definitized under *construction* contracts
30 days or less	
31 to 60 days	
61 to 90 days	
91 to 180 days	
181 to 365 days	
366 or more days	
After completion of contract performance via a *contract modification* addressing all undefinitized equitable adjustments received during contract performance	

36.212 Preconstruction orientation.

(a) The *contracting officer* will inform the successful *offeror* of significant matters of interest, including-

(1) Statutory matters such as labor standards (subpart 22.4), and subcontracting plan requirements (subpart 19.7); and

(2) Other matters of significant interest, including who has authority to decide matters such as contractual, administrative (*e.g.,* security, safety, and fire and environmental protection), and *construction* responsibilities.

(b) As appropriate, the *contracting officer may* issue an explanatory letter or conduct a preconstruction conference.

(c) If a preconstruction conference is to be held, the *contracting officer shall*-

(1) Conduct the conference prior to the start of *construction* at the work site;

(2) Notify the successful *offeror* of the date, time, and location of the conference (see 36.522); and

(3) Inform the successful *offeror* of the proposed agenda and any need for attendance by subcontractors.

36.213 Special procedures for sealed bidding in construction contracting.

36.213-1 General.

Contracting officers shall follow the procedures for sealed bidding in part 14, as modified and supplemented by the requirements in this subpart.

36.213-2 Presolicitation notices.

(a) Unless the requirement is waived by the *head of the contracting activity* or a designee, the *contracting officer shall* issue presolicitation notices on any *construction* requirement when the proposed contract is expected to exceed the *simplified acquisition threshold*. Presolicitation notices *may* also be used when the proposed contract is not expected to exceed the *simplified acquisition threshold*. These notices *shall* be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices *must*-

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range) (see 36.204);

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for *inspection* without charge;

(5) Specify a date by which requests for the invitation for bids *should* be submitted;

(6) State whether award is restricted to small businesses;

(7) Specify any amount to be charged for *solicitation* documents; and

(8) Be publicized through the *Governmentwide point of entry* in accordance with 5.204.

36.213-3 Invitations for bids.

(a) Invitations for bids for *construction shall* allow sufficient time for bid preparation (*i.e.,* the period of time between the date invitations are distributed and the date set for opening of bids) (but see 5.203 and 14.202-1) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard to the *construction* season and the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

(b) invitations for bids *shall* be prepared in accordance with subpart 14.2 and this section using the forms prescribed in part 53.

(c) *Contracting officers should* assure that each invitation for bids includes the following information, when applicable. The appropriate wage determination of the Secretary of Labor (see subpart 22.4), or, if the invitation for bids *must* be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see 14.208 and subpart 22.4).

(1) The Performance of Work by the Contractor clause (see 36.501 and 52.236-1).

(2) The magnitude of the proposed *construction* project (see 36.204).

(3) The period of performance (see subpart 11.4).

(4) Arrangements made for bidders to inspect the site and examine the data concerning performance of the work (see 36.210).

(5) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during *construction*.

(6) Information concerning the prebid conference (see 14.207).

(7) Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders (see subpart 9.1).

(8) Any special instructions concerning bids, *alternate* bids, and award.

(9) Any instructions concerning reporting requirements.

(d) The *contracting officer shall* send invitations for bids to prospective bidders who requested them in response to the presolicitation notice, and *should* send them to other prospective bidders upon their specific request (see 5.102(a)).

36.213-4 Notice of award.

When a notice of award is issued, it *shall* be done *in writing* or electronically, *shall* contain information required by 14.408, and *shall*-

(a) Identify the invitation for bids;

(b) Identify the contractor's bid;

(c) State the award price;

(d) Advise the contractor that any required payment and performance bonds *must* be promptly executed and returned to the *contracting officer*;

(e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

36.214 Special procedures for price negotiation in construction contracting.

(a) Agencies *shall* follow the policies and procedures in part 15 when negotiating prices for *construction*.

(b) The *contracting officer shall* evaluate proposals and associated *certified cost or pricing data* and *data other than certified cost or pricing data* and *shall* compare them to the Government estimate.

(1) When submission of *certified cost or pricing data* is not required (see 15.403-1 and 15.403-2), and any element of proposed cost differs significantly from the Government estimate, the *contracting officer should* request the *offeror* to submit cost information concerning that element (*e.g.,* wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the *contracting officer shall* make sure both the *offeror* and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate *shall* be corrected and the changes *shall* be documented in the contract file.

(c) When appropriate, additional *pricing* tools *may* be used. For example, proposed prices *may* be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks *may* be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

36.215 Special procedure for cost-reimbursement contracts for construction.

Contracting officers may use a cost-reimbursement contract to acquire *construction* only when its use is consistent with subpart 16.3 and part 15 (see 15.404-4(c)(4)(i) for fee limitation on cost-reimbursement contracts).

Subpart 36.3 - Two-Phase Design-Build Selection Procedures

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by 10 U.S.C. 3241 and 41 U.S.C. 3309.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal *acquisition planning* (see part 7), if considering the use of two-phase design-build selection procedures, the *contracting officer shall* conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures *shall* be used when the *contracting officer* determines that this method is appropriate, based on the following:

(1) Three or more *offers* are anticipated.

(2) Design work *must* be performed by *offerors* before developing price or cost proposals, and *offerors* will incur a substantial amount of expense in preparing *offers*.

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the *head of the contracting activity*.

36.302 Scope of work.

The agency *shall* develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work *may* include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in subpart 36.6 *shall* be used.

36.303 Procedures.

One *solicitation may* be issued covering both phases, or two *solicitations may* be issued in sequence. Proposals will be evaluated in Phase One to determine which *offerors* will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303-1 Phase One.

(a) Phase One of the *solicitation*(s) *shall* include-

(1) The scope of work;

(2) The phase-one evaluation factors, including-

(i) Technical approach (but not detailed design or technical information);

(ii) Technical qualifications, such as-

(A) Specialized experience and technical competence;

(B) Capability to perform;

(C) *Past performance* of the *offeror*'s team (including the architect-engineer and *construction* members); and

(iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);

(3) Phase-two evaluation factors (see 36.303-2); and

(4) A statement of the maximum number of *offerors* that will be selected to submit phase-two proposals. The maximum number specified in the *solicitation shall* not exceed five unless the *contracting officer* determines, for that particular *solicitation*, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The *contracting officer shall* document this determination in the contract file. For *acquisitions* greater than $5.5 million, the determination *shall* be approved by the *head of the contracting activity*, delegable to a level no lower than the senior *contracting* official within the *contracting activity*. In civilian agencies, for paragraph (a)(4) of this section, the senior

contracting official is the advocate for competition for the *procuring activity*, unless the agency designates a different position in agency procedures. The approval *shall* be documented in the contract file.

(b) After evaluating phase-one proposals, the *contracting officer shall* select the most highly qualified *offerors* (not to exceed the maximum number specified in the *solicitation* in accordance with 36.303-1(a)(4)) and request that only those *offerors* submit phase-two proposals.

36.303-2 Phase Two.

(a) Phase Two of the *solicitation*(s) *shall* be prepared in accordance with part 15, and include phase-two evaluation factors, developed in accordance with 15.304. Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the *solicitation*(s) *shall* require submission of technical and price proposals, which *shall* be evaluated separately, in accordance with part 15.

Subpart 36.4 - [Reserved]

Subpart 36.5 - Contract Clauses

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 AlternateI.

(b) The *contracting officer shall* insert the clause or the clause with its AlternateI 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.

Subpart 36.6 - Architect-Engineer Services

36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the *acquisition* of *architect-engineer services*, including orders for *architect-engineer services* under multi-agency contracts (see 16.505(a)(9)).

36.601 Policy.

36.601-1 Public announcement.

The Government *shall* publicly announce all requirements for *architect-engineer services* and negotiate contracts for these services based on the demonstrated competence and qualifications of

prospective contractors to perform the services at fair and reasonable prices. (See 40 U.S.C. 1101 *et seq*.)

36.601-2 Competition.

Acquisition of *architect-engineer services* in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601-3 Applicable contracting procedures.

(a)

(1) For facility design contracts, the statement of work *shall* require that the architect-engineer specify, in the *construction* design specifications, use of the maximum practicable amount of *recovered materials* consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also *shall* require the architect-engineer to consider energy conservation, *pollution prevention*, and *waste reduction* to the maximum extent practicable in developing the *construction* design specifications.

(2) Facility design *solicitations* and contracts that include the specification of energy-consuming *products must* comply with the requirements at subpart 23.107-3.

(b) Sources for contracts for *architect-engineer services shall* be selected in accordance with the procedures in this subpart rather than the *solicitation* or source selection procedures prescribed in parts 13, 14, and 15 of this regulation.

(c) When the contract statement of work includes both *architect-engineer services* and other services, the *contracting officer shall* follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the *contracting officer shall* follow the procedures in parts 13, 14, or 15.

(d) Other than "incidental services" as specified in the definition of *architect-engineer services* in 2.101 and in 36.601-4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also *may* perform those services, *should* be acquired pursuant to parts 13, 14, and 15.

36.601-4 Implementation.

(a) *Contracting officers should* consider the following services to be "*architect-engineer services*" subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or *construction* of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, *value engineering*, *construction* phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and *shall* be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, *construction*, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services *shall* be procured pursuant to provisions in parts 13, 14, and 15.

(b) *Contracting officers may* award contracts for *architect-engineer services* to any firm permitted by law to practice the professions of architecture or engineering.

36.602 Selection of firms for architect-engineer contracts.

36.602-1 Selection criteria.

(a) Agencies *shall* evaluate each potential contractor in terms of its-

(1) Professional qualifications necessary for satisfactory performance of required services;

(2) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, *pollution prevention*, *waste reduction*, and the use of *recovered materials*;

(3) Capacity to accomplish the work in the required time;

(4) *Past performance* on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

(b) When the use of design competition is approved by the *agency head* or a designee, agencies *may* evaluate firms on the basis of their conceptual design of the project. Design competition *may* be used when-

(1) Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;

(2) Sufficient time is available for the production and evaluation of conceptual designs; and

(3) The design competition, with its costs, will substantially benefit the project.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods and feasible ways to prescribe the use of *recovered materials* and achieve *waste reduction* and energy-efficiency in facility design (see part 23).

36.602-2 Evaluation boards.

(a) When acquiring *architect-engineer services*, an agency *shall* provide for one or more permanent or ad hoc architect-engineer evaluation boards (which *may* include preselection boards when authorized by agency regulations) to be composed of members who, collectively, have experience in architecture, engineering, *construction*, and Government and related *acquisition* matters. Members *shall* be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedure, private practitioners of architecture, engineering, or related professions. One Government member of each board *shall* be designated as the chairperson.

(b) No firm *shall* be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding agency's evaluation board.

36.602-3 Evaluation board functions.

Under the general direction of the *head of the contracting activity*, an evaluation board *shall* perform the following functions:

(a) Review the current data files on eligible firms and responses to a public notice concerning the particular project (see 36.603).

(b) Evaluate the firms in accordance with the criteria in 36.602-1.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

(d) Prepare a selection report for the *agency head* or other designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report *shall* include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

36.602-4 Selection authority.

(a) The final selection decision *shall* be made by the *agency head* or a designated selection authority.

(b) The selection authority *shall* review the recommendations of the evaluation board and *shall*, with the advice of appropriate technical and staff representatives, make the final selection. This final selection *shall* be a listing, in order of preference, of the firms considered most highly qualified to perform the work. If the firm listed as the most preferred is not the firm recommended as the most

highly qualified by the evaluation board, the selection authority *shall* provide for the contract file a written explanation of the reason for the preference. All firms on the final selection list are considered "selected firms" with which the *contracting officer may* negotiate in accordance with 36.606.

(c) The selection authority *shall* not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the selection authority *shall* record the reasons and return the report through channels to the evaluation board for appropriate revision.

(d) The board *shall* be promptly informed of the final selection.

36.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

When authorized by the agency, either or both of the short processes described in this subsection *may* be used to select firms for contracts not expected to exceed the *simplified acquisition threshold*. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 *shall* be followed.

(a) *Selection by the board.* The board *shall* review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report *shall* serve as the final selection list and *shall* be provided directly to the *contracting officer*. The report *shall* serve as an authorization for the *contracting officer* to commence negotiations in accordance with 36.606.

(b) *Selection by the chairperson of the board.* When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures *shall* be followed:

(1) The chairperson of the board *shall* perform the functions required in 36.602-3.

(2) The *agency head* or designated selection authority *shall* review the report and approve it or return it to the chairperson for appropriate revision.

(3) Upon receipt of an approved report, the chairperson of the board *shall* furnish the *contracting officer* a copy of the report which will serve as an authorization for the *contracting officer* to commence negotiations in accordance with 36.606.

36.603 Collecting data on and appraising firms qualifications.

(a) *Establishing offices.* Agencies *shall* maintain offices or permanent evaluation boards, or arrange to use the offices or boards of other agencies, to receive and maintain data on firms wishing to be considered for Government contracts. Each office or board *shall* be assigned a jurisdiction by its parent agency, making it responsible for a geographical region or area, or a specialized type of *construction*.

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm *must* file with the appropriate office or board the Standard Form 330, "Architect-Engineer Qualifications," Part II, and when applicable, SF 330, Part I.

(c) *Data files and the classification of firms.* Under the direction of the parent agency, offices or

permanent evaluation boards *shall* maintain an architect-engineer qualifications data file. These offices or boards *shall* review the SF 330 filed, and *shall* classify each firm with respect to-

(1) Location;

(2) Specialized experience;

(3) Professional capabilities; and

(4) Capacity, with respect to the scope of work that can be undertaken. A firm's ability and experience in computer-assisted design *should* be considered, when appropriate.

(d) *Currency of files.* Any office or board maintaining qualifications data files *shall* review and update each file at least once a year. This process *should* include:

(1) Encouraging firms to submit annually an updated statement of qualifications and performance data on a SF 330, Part II.

(2) Reviewing the SF 330, Part II, and, if necessary, updating the firm's classification (see 36.603(c)).

(3) Recording any contract awards made to the firm in the past year.

(4) Assuring that the file contains a copy of each pertinent performance evaluation (see 42.1502(f)).

(5) Discarding any material that has not been updated within the past three years, if it is no longer pertinent, see 42.1502(f).

(6) Posting the date of the review in the file.

(e) *Use of data files.* Evaluation boards and other appropriate Government employees, including *contracting officers*, *shall* use data files on firms.

36.604 Performance evaluation.

See 42.1502(f) for the requirements for preparing *past performance* evaluations for architect-engineer contracts.

36.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of *architect-engineer services shall* be prepared and furnished to the *contracting officer* before commencing negotiations for each proposed contract or *contract modification* expected to exceed the *simplified acquisition threshold*. The estimate *shall* be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal.

(b) Access to information concerning the Government estimate *shall* be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule *may* be made during contract negotiations to allow the *contracting officer* to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent

deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government's estimate *shall* not be disclosed except as permitted by agency regulations.

36.606 Negotiations.

(a) Unless otherwise specified by the selection authority, the final selection authorizes the *contracting officer* to begin negotiations. Negotiations *shall* be conducted in accordance with part 15 of this chapter, beginning with the most preferred firm in the final selection (see 15.404-4(c)(4)(i) on fee limitation).

(b) The *contracting officer should* ordinarily request a proposal from the firm, ensuring that the *solicitation* does not inadvertently preclude the firm from proposing the use of modern design methods.

(c) The *contracting officer shall* inform the firm that no *construction* contract *may* be awarded to the firm that designed the project, except as provided in 36.209.

(d) During negotiations, the *contracting officer should* seek advance agreement (see 31.109) on any charges for computer-assisted design. When the firm's proposal does not cover appropriate modern and cost-effective design methods (*e.g.,* computer-assisted design), the *contracting officer should* discuss this topic with the firm.

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(b), Subcontractors and Outside Associates and Consultants (*Architect-Engineer Services*) (see 52.244-4), limits a firm's subcontracting to firms agreed upon during negotiations.

(f) If a mutually satisfactory contract cannot be negotiated, the *contracting officer shall* obtain a written final proposal revision from the firm, and notify the firm that negotiations have been terminated. The *contracting officer shall* then initiate negotiations with the next firm on the final selection list. This procedure *shall* be continued until a mutually satisfactory contract has been negotiated. If negotiations fail with all selected firms, the *contracting officer shall* refer the matter to the selection authority who, after consulting with the *contracting officer* as to why a contract cannot be negotiated, *may* direct the evaluation board to recommend additional firms in accordance with 36.602.

36.607 Release of information on firm selection.

(a) After final selection has taken place, the *contracting officer may* release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work *should* be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the *contracting officer may* release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the *contracting officer may* release award information (see 5.401).

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.503, 15.506(b) through (f), and 15.507(c). Note that 15.506(d)(2) through (d)(5) do not apply to architect-engineer contracts.

36.608 Liability for Government costs resulting from design errors or deficiencies.

Architect-engineer contractors *shall* be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm *may* be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a *construction* contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the *contracting officer* (with the advice of technical personnel and legal counsel) *shall* consider the extent to which the architect-engineer contractor *may* be reasonably liable. The *contracting officer shall* enforce the liability and issue a demand for payment of the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The *contracting officer shall* include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

36.609 Contract clauses.

36.609-1 Design within funding limitations.

(a) The Government *may* require the architect-engineer contractor to design the project so that *construction* costs will not exceed a contractually specified dollar limit (funding limitation). If the price of *construction* proposed in response to a Government *solicitation* exceeds the *construction* funding limitation in the architect-engineer contract, the firm *shall* be solely responsible for redesigning the project within the funding limitation. These additional services *shall* be performed at no increase in the price of this contract. However, if the cost of proposed *construction* is affected by events beyond the firm's reasonable control (*e.g.,* if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a *construction solicitation*), the firm *shall* not be obligated to redesign at no cost to the Government. If a firm's design fails to meet the contractual limitation on *construction* cost and the Government determines that the firm *should* not redesign the project, a written statement of the reasons for that determination *shall* be placed in the contract file.

(b) The amount of the *construction* funding limitation (to be inserted in paragraph (c) of the clause at 52.236-22) is to be established during negotiations between the contractor and the Government. This estimated *construction* contract price *shall* take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the *contracting officer should* make available to the contractor the information upon which the Government has based its initial *construction* estimate and any subsequently acquired information that *may* affect the *construction* costs.

(c) The *contracting officer shall* insert the clause at 52.236-22, Design Within Funding Limitations, in fixed-price architect-engineer contracts except when-

(1) The *head of the contracting activity* or a designee determines *in writing* that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

36.609-2 Redesign responsibility for design errors or deficiencies.

(a) Under architect-engineer contracts, contractors *shall* be required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the Government does not require a firm to correct such errors, the *contracting officer shall* include a written statement of the reasons for that decision in the contract file.

(b) The *contracting officer shall* insert the clause at 52.236-23, Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

36.609-3 Work oversight in architect-engineer contracts.

The *contracting officer shall* insert the clause at 52.236-24, Work Oversight in Architect-Engineer Contracts, in all architect-engineer contracts.

36.609-4 Requirements for registration of designers.

Insert the clause at 52.236-25, Requirements for Registration of Designers, in architect-engineer contracts, except that it *may* be omitted when the design will be performed-

(a) Outside the *United States* and its *outlying areas*; or

(b) In a State or outlying area of the *United States* that does not have registration requirements for the particular field involved.

Subpart 36.7 - Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

36.700 Scope of subpart.

This subpart sets forth requirements for the use of standard and optional forms, prescribed in part 53, for *contracting* for *construction*, *architect-engineer services*, or dismantling, demolition, or removal of improvements. A listing of the Standard forms is located in subpart 53.3.

36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(a) Standard Form 1442, *Solicitation*, *Offer*, and Award (*Construction*, Alteration, or Repair), *shall* be

used to solicit and submit *offers*, and award *construction* or dismantling, demolition, or removal of improvements contracts expected to exceed the *simplified acquisition thresholds*, and *may* be used for contracts at or below the *simplified acquisition threshold*. In all sealed bid *solicitations*, or when the Government otherwise requires a noncancellable *offer* acceptance period, the *contracting officer shall* insert in the blank provided in Block 13D the number of calendar days that the *offer must* be available for acceptance after the date *offers* are due.

(b) Optional Form 347, Order for *Supplies* or Services, *may* be used for *construction* or dismantling, demolition, or removal of improvements contracts that are at or below the *simplified acquisition threshold*; provided, that the *contracting officer* includes the clauses required (see subpart 36.5) in the simplified *acquisitions* (see part 13).

(c) *Contracting officers may* use Optional Form 1419, Abstract of *Offers-Construction*, and Optional Form 1419A, Abstract of *Offers-Construction*, Continuation Sheet, or the automated equivalent, to record *offers* submitted in response to a sealed bid *solicitation* (see 14.403) and *may* also use it to record *offers* submitted in response to negotiated *solicitations*.

36.702 Forms for use in contracting for architect-engineer services.

(a) *Contracting officers must* use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for *architect-engineer services* when the services will be performed in the *United States* or its *outlying areas*.

(b) The SF 330, Architect-Engineer Qualifications, *shall* be used to evaluate firms before awarding a contract for *architect-engineer services*:

(1) Use the SF 330, Part I-Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the *simplified acquisition threshold*. Part I *may* be used when the contract amount is expected to be at or below the *simplified acquisition threshold*, if the *contracting officer* determines that its use is appropriate.

(2) Use the SF 330, Part II-General Qualifications, to obtain information from an architect-engineer firm about its general professional qualifications.