Subpart 36.1 - General

Parent topic: Part 36 - Construction and Architect-Engineer Contracts

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.