

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.