

# 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 all new *construction*, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (available at <https://www.epa.gov/greeningepa/guiding-principles-federal-leadership-high-performance-and-sustainable-buildings>);

(2) Pursue cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials;

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

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

(5) Ensure *pollution prevention* and eliminate waste by *diverting* at least 50 percent of *construction and demolition materials and debris* by the end of Fiscal Year 2015.

(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.