



Homeland  
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Paul Courtney  
Chief Procurement Officer

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SUBJECT: FAR Class Deviation (Number 25-15) for FAR Part 36 in Support  
of the Executive Order on Restoring Common Sense to Federal  
Procurement

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 36 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR Part 36.
2. **Background.** [Executive Order \(E.O.\) 14275, Restoring Common Sense to Federal Procurement](#), signed April 15, 2025, mandates a comprehensive review and simplification of the FAR.

The FAR is being updated to:

- Eliminate non-statutory language
- Remove redundant or obsolete language
- Enhance clarity through plain language
- Align with the new FAR framework
- Preserve essential governmentwide acquisition standards.

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative. This initiative will make the FAR more concise, understandable, and focused on core procurement requirements.

3. **Summary of Changes.** FAR Part 36, Construction and Architect-Engineer Contracts, has undergone a comprehensive revision that includes a complete structural reorganization to align with the acquisition lifecycle, enhanced clarity, and a strategic consolidation of policies coupled with the elimination of outdated requirements. In addition, multiple clauses and provisions were removed reflecting an almost 20% reduction in clauses and provisions.

Statutory requirements retained in the RFO FAR part 36 model deviation include, but are not limited to, the following:

- 10 U.S.C. § 3241 and 41 U.S.C. § 3309, Design-Build Selection Procedures
- 15 U.S.C. § 644(w), Administration of Construction Change Orders
- Pub. L. 92-582, Brooks Act of 1972
- Pub. L. 103-355, Federal Acquisition Streamlining Act of 1994
- Pub. L. 108-136, Services Acquisition Reform Act of 2003

Change	Description
<b>Retained</b>	<ul style="list-style-type: none"> <li>• <b>The scope of the part is simplified</b> to define the part's coverage to "construction, which includes dismantling, demolition or removal of improvements; and architect-engineer services".</li> <li>• The <b>definition of “Firm”</b> is retained in the part.</li> <li>• The section titled <b>“Policy”</b> is moved from 36.104 to 36.002 and revised to consolidate critical high-level requirements: <ul style="list-style-type: none"> <li>○ Agencies <b>must require the use of Project Labor Agreement</b> for Federal construction projects with a total estimated construction cost at or above \$35 million unless an exception applies.</li> <li>○ Market research for construction contracts valued at or above \$35 million must involve a <b>current and proactive examination of the market conditions in the project area</b>.</li> <li>○ For <b>design and construction selection</b>, the contracting officer must use either design-bid-build procedures, two-phase design-build procedures, or another acquisition procedure authorized by law.</li> <li>○ Agencies must implement <b>high-performance sustainable building</b> practices.</li> </ul> </li> <li>• <b>New subparts</b> 36.1, Pre-Solicitation, 36.2, Evaluation and Award and 36.3, Postaward create logical organization in <b>alignment with the acquisition lifecycle</b>, creating clear points of reference.</li> <li>• The contracting officer is required to evaluate the need for <b>liquidated damages</b> during acquisition planning. The FAR was previously silent as to the timing of this evaluation.</li> <li>• Clauses retained with plain language adjustments include: <ul style="list-style-type: none"> <li>○ 52.236-2, Differing Site Conditions</li> <li>○ 52.236-3, Site Investigation and Conditions Affecting the Work</li> <li>○ 52.236-5, Material and Workmanship</li> <li>○ 52.236-6, Superintendence by the Contractor</li> <li>○ 52.236-7, Permits and Responsibilities</li> <li>○ 52.236-8, Other Contracts</li> <li>○ 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements</li> <li>○ 52.236-10, Operations and Storage Areas</li> <li>○ 52.236-11, Use and Possession Prior to Completion</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ 52.236-12, Cleaning Up</li> <li>○ 52.236-13, Accident Prevention</li> <li>○ 52.236-14, Availability and Use of Utility Services</li> <li>○ 52.236-15, Schedules for Construction Contracts</li> <li>○ 52.236-16, Quantity Surveys</li> <li>○ 52.236-17, Layout of Work</li> <li>○ 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts</li> <li>○ 52.236-20, [remains Reserved]</li> <li>○ 52.236-21, Specifications and Drawings for Construction</li> <li>○ 52.236-22, Design Within Funding Limitations</li> <li>○ 52.236-23, Responsibility of the Architect-Engineer Contractor</li> <li>○ 52.236-24, Work Oversight in Architect-Engineer Contracts</li> <li>○ 52.236-25, Requirements for Registration of Designers</li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>• Definitions previously scattered between 36.001 and 36.102 are removed, leaving only <b>a single definition, "Firm,"</b> at 36.001.</li> <li>• The <b>"Applicability"</b> section, previously at 36.101, is removed.</li> <li>• The reference to <b>evaluation of contract performance</b>, previously at 36.201, has been removed. The new subpart 36.3, Postaward, refers contracting officers to FAR part 42 for general contract administration functions.</li> <li>• The timing of requirement to prepare and furnish the <b>Government estimate of construction costs</b> to the contracting officer is clarified to be done <b>"before receipt of proposals"</b> instead of what was previously <b>"at the earliest practicable time."</b> The instructions were also moved from 36.203 to 36.101-6.</li> <li>• The section titled <b>"Disclosure of the magnitude of construction projects"</b>, previously at 36.204, is removed. This information may still be disclosed based on the strategy needs of the acquisition team.</li> <li>• Supplemental procedures for <b>sealed bidding</b> are removed. Acquisition teams desiring to utilize sealed bidding should review part 14.</li> <li>• The requirements for a <b>site inspection during the solicitation</b> phase, previously at 36.210 and 36.523, and conducting a <b>preconstruction conference after award</b>, previously at 36.212 and 36.522, are removed.</li> <li>• The <b>"Procedures"</b> section for two-phased design-build selection, previously at 36.303, has been moved to 36.101-2 and significantly streamlined. The contracting activity retains discretion to issue one or two solicitation documents for the procurement phases.</li> <li>• The section titled, <b>"Performance of Work by the Contractor"</b>, formerly located at 36.501 and the implementing clause at 52.236-1 are removed. This requirement, often referred to as the <b>"12 percent rule,"</b> mandated that prime contractors perform a specified</li> </ul>

	<p>minimum percentage of the total contract work with their own forces. This requirement is separate from the clause at 52.219-14, Limitations of Subcontracting.</p> <ul style="list-style-type: none"> <li>• Specific evaluation requirements for <b>architect-engineer contracts</b>, previously at 36.602-1 and 36.603, are removed. Contracting activities now have additional flexibility in evaluating offeror qualifications.</li> <li>• Clauses and provisions removed include: <ul style="list-style-type: none"> <li>○ 52.236-1, Performance of Work by the Contractor</li> <li>○ 52.236-4, Physical Data</li> <li>○ 52.236-19, Organization and Direction of the Work</li> <li>○ 52.236-26, Preconstruction Conference</li> <li>○ 52.236-27, Site Visit (Construction)</li> <li>○ 52.236-28, Preparation of Proposals-Construction</li> </ul> </li> </ul>
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This table is not an exhaustive list.

1. **Instructions.** The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 36 deviation text instead of FAR Part 36 as codified at 48 CFR Chapter 1. The Council's RFO Part 36 model deviation text is available at: <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-36>. See Attachment 1 for changes to FAR Part 36 solicitation provisions and contract clauses.
4. **Applicability.** This class deviation applies to all DHS procurements.
5. **Authority.** This class deviation is issued under the authority of E.O. 14275, OMB M- 25-25, and 48 CFR 1.4, and RFO FAR 1.304
6. **Effective Date.** This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.
7. **Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation at [Acquisition.Policy@hq.dhs.gov](mailto:Acquisition.Policy@hq.dhs.gov).

**Attachments:**

1. FAR Part 36 Solicitation Provisions and Contract Clauses Revisions

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 52.2—Text of Provisions and Clauses**

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#### **52.236-1 [Reserved (AUG 2025) (DEVIATION 25-15)]**

#### **52.236-2 Differing Site Conditions.**

As prescribed in 36.101-7(a), insert the following clause:

##### **Differing Site Conditions (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) Latent physical conditions or subsurface conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b)(1) The Contracting Officer will investigate the site conditions promptly after receiving such a notice.

(2) If the conditions materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract an equitable adjustment must be made under this clause.

(c) No request for an equitable adjustment to the contract under this clause will be allowed, unless the Contractor has given the written notice required.

(d) No request for an equitable adjustment to the contract for differing site conditions will be allowed if made after final payment under this contract.

(End of clause)

#### **52.236-3 Site Investigation and Conditions Affecting the Work.**

As prescribed in 36.101-7(a), insert the following clause:

**Site Investigation and Conditions Affecting the Work (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including—

- (1) Conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) The availability of labor, water, electric power, and roads;
- (3) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) The conformation and conditions of the ground; and
- (5) The character of equipment and facilities needed preliminary to and during work performance.

(b) The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(c) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

**52.236-4 [Reserved (AUG 2025) (DEVIATION 25-15)]**

**52.236-5 Material and Workmanship.**

As prescribed in 36.101-7(b), insert the following clause:

**Material and Workmanship (AUG 2025) (DEVIATION 25-15)**

(a)(1) Equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract.

(2) References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.

(3) The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery, mechanical, and other equipment to be incorporated into the work.

(1) When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment.

(2) When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work.

(i) When requesting approval, the Contractor shall provide appropriate and required information concerning the material or articles.

(ii) When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval are installed or used at the risk of subsequent rejection.

(c) Work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

#### **52.236-6 Superintendence by the Contractor.**

As prescribed in 36.101-7(a), insert the following clause:

#### **Superintendence by the Contractor (AUG 2025) (DEVIATION 25-15)**

During performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

**52.236-7 Permits and Responsibilities.**

As prescribed in 36.101-7(c), insert the following clause:

**Permits and Responsibilities (AUG 2025) (DEVIATION 25-15)**

- (a) The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work.
- (b) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence.
- (c) The Contractor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

**52.236-8 Other Contracts.**

As prescribed in 36.101-7(a), insert the following clause:

**Other Contracts (AUG 2025) (DEVIATION 25-15)**

- (a) The Government may award other contracts for work at or near the site of the work under this contract. The Contractor shall cooperate and coordinate with—
  - (1) Other contractors; and
  - (2) Government employees.
- (b) The Contractor shall adapt scheduling and performance of the work under this contract to accommodate the performance of other contractors. The Contractor's scheduling and performance shall not delay or interfere with the performance of work by other contractors or Government employees.

(End of clause)



**52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.**

As prescribed in 36.101-7(a), insert the following clause:

**Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements  
(AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall preserve and protect structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed, and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so. If any limbs or branches of trees are broken during contract performance, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage and, in the event of damage resulting from non-compliance with this contract or failure to exercise reasonable care in performing the work, shall promptly repair existing improvements and utilities at or near the work site, on adjacent property of a third party, and on or near transportation paths and routes. The Contractor shall repair any damage, including those that are the property of a third party.

(c) If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

**52.236-10 Operations and Storage Areas.**

As prescribed in 36.101-7(a), insert the following clause:

**Operations and Storage Areas (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall confine all activities and operations on site to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (*e.g.*, storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(1) Temporary buildings (*e.g.*, storage sheds, shops, offices) and utilities—

(i) May be erected by the Contractor only with the approval of the Contracting Officer; and

(ii) Shall only be built with labor and materials furnished by the Contractor without additional expense to the Government.

(2) The temporary buildings and utilities are the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work.

(3) The temporary buildings and utilities may be abandoned and need not be removed, with written consent of the Contracting Officer.

(c) The Contractor shall, as prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation.

(End of clause)

#### **52.236-11 Use and Possession Prior to Completion.**

As prescribed in 36.101-7(d), insert the following clause:

##### **Use and Possession Prior to Completion (AUG 2025) (DEVIATION 25-15)**

(a) The Government has the right to take possession of or use any completed or partially completed part of the work.

(1) Before taking possession of or using any work, the Contracting Officer will furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use.

(2) Failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract.

(3) The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b)(1) While the Government has such possession or use, the Contractor is relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities".

(2) If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

#### **52.236-12 Cleaning Up.**

As prescribed in 36.101-7(a), insert the following clause:

##### **Cleaning Up (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall keep the work area, including storage areas, in a clean, neat, orderly condition, and free from accumulations of waste materials.

(b) Before completing the work, the Contractor shall remove from the site any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government.

(End of clause)

#### **52.236-13 Accident Prevention.**

As prescribed in 36.101-7(e), insert the following clause:

##### **Accident Prevention (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall provide and maintain work environments and procedures that—

(1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) In addition, for contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910 ; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(1) If the Contracting Officer becomes aware of any noncompliance with these requirements or any condition that poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer will notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action.

(2) This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required.

(3) After receiving the notice, the Contractor shall immediately take corrective action.

(4) If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken.

(5) The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop-work order issued under this clause.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts.

(End of clause)

*Alternate I* ( Nov 1991). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall-

- (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
- (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

#### **52.236-14 Availability and Use of Utility Services.**

As prescribed in 36.101-7(f), insert the following clause:

##### **Availability and Use of Utility Services (AUG 2025) (DEVIATION 25-15)**

- (a) The Government will make all reasonably required utilities available to the Contractor from existing outlets and supplies, as specified in the contract.
- (b) Unless otherwise provided in the contract, the Contractor shall pay for all utility costs.
- (c) The Contractor, at its expense and in a workmanlike manner, shall install and maintain all necessary temporary connections, distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges.
- (d) Before final acceptance by the Government, the Contractor shall remove the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

#### **52.236-15 Schedules for Construction Contracts.**

As prescribed in 36.101-7(g), insert the following clause:

##### **Schedules for Construction Contracts (AUG 2025) (DEVIATION 25-15)**

- (a)(1) Within five days after the work commences on the contract or another period of time determined by the Contracting Officer, the Contractor shall prepare and submit to the Contracting Officer for approval a practicable schedule showing the order in which the

Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the work (including acquiring materials, plant, and equipment).

(2) The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.

(3) If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall continually update the actual progress in the schedule and shall submit it to the Contracting Officer by the means prescribed in the contract for transmittals or as directed by the Contracting Officer.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(1) If the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to recover lost time and execute in accordance with the approved schedule, without additional cost to the Government.

(2) Such steps may include increasing the number of shifts, overtime operations, days of work, and/or the amount of construction plant.

(3) The Contractor shall submit, for approval, supplementary schedule(s) that demonstrate how the lost time will be recovered.

(d) If the Contractor does not recover the lost time, the Contracting Officer may determine that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

#### **52.236-16 Quantity Surveys.**

As prescribed in 36.101-7(h), insert the following clause:

#### **Quantity Surveys (AUG 2025) (DEVIATION 25-15)**

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(1) The Government will conduct the original and final surveys and make the computations based on them.

(2)(i) The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys.

(ii) All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(b) Upon completing a survey, the Contractor shall promptly provide the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, which may be used by the Contracting Officer to determine the amount of progress payments.

(c) Upon completing a survey, the Contractor shall promptly provide the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, which may be used by the Contracting Officer to determine the amount of progress payments.

(End of clause)

*Alternate I* (Apr 1984). 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, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

#### **52.236-17 Layout of Work.**

As prescribed in 36.101-7(i), insert the following clause:

#### **Layout of Work (AUG 2025) (DEVIATION 25-15)**

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(a) The Contractor shall lay out its work from Government-established base lines and benchmarks provided on the drawings.

(b) The Contractor shall be responsible for all measurements in connection with the layout.

(c) The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required for the layout.

(d) The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer.

(e)(1) The Contractor shall be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them.

(2) If such marks are destroyed by the Contractor, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

#### **52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.**

As prescribed in 36.101-7(j), insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

##### **Work Oversight in Cost-Reimbursement Construction Contracts (Apr 1984)**

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

#### **52.236-19 [Reserved (AUG 2025) (DEVIATION 25-15)]**



**52.236-20 [Reserved]**

**52.236-21 Specifications and Drawings for Construction.**

As prescribed in 36.101-7(k), insert the following clause:

**Specifications and Drawings for Construction (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall keep at the site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto.

(b) Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

(1) In case of difference between drawings and specifications, the specifications shall govern.

(2) In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing.

(3) Any adjustment by the Contractor without such a determination shall be at its own risk and expense.

(c) The Contracting Officer will furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(d)(1) Words, such as, “directed”, “required”, “ordered”, “designated”, “prescribed”, or words of like import when used, in the specifications or on the drawings are intended to mean the “direction”, “requirement”, “order”, “designation”, or “prescription”, of the Contracting Officer.

(2) Words, such as, “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by”, or “acceptable to”, or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.

(e) Where “as shown”, “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place”, that is “furnished and installed”.

(f) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams,

layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(g)(1) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review.

(2) Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission.

(h) The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor.

(1) Any work done before such approval shall be at the Contractor's risk.

(2) Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with paragraph (i) of this clause.

(i)(1) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission.

(2) If the Contracting Officer approves any such variation, the Contracting Officer will issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(j) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

*Alternate I* (Apr 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

*Alternate II* (Apr 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish \_\_\_\_\_ [*Contracting Officer complete by inserting desired amount*] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

## **52.236-22 Design Within Funding Limitations.**

As prescribed in 36.102-4(a), insert the following clause:

### **Design Within Funding Limitations (AUG 2025) (DEVIATION 25-15)**

(a) The Contractor shall accomplish the design services required under this contract to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (d) of this clause.

(1) When bids or proposals for the construction contract are received that exceed the estimated price, the Contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation.

(2) These additional services shall be performed at no increase in the price of this contract.

(3) The Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly provide written notice to the Contracting Officer if it finds that the project will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations.

(1) Upon receipt of such written notice, the Contracting Officer will review the Contractor's revised estimate of construction cost.

(2) The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable,—

(i) Authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (d) of this clause; or

(ii) The Government may adjust such estimated construction contract price.

(c) When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(d) The estimated construction contract price for the project described in this contract is \$\_\_\_\_\_.

(End of clause)

#### **52.236-23 Responsibility of the Architect-Engineer Contractor.**

As prescribed in 36.102-4(b), insert the following clause:

##### **Responsibility of the Architect-Engineer Contractor (Apr 1984)**

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract.

(b) The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(c) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.

(d) The Contractor shall be and remain liable to the Government, in accordance with applicable law, for all damages to the Government caused by the Contractor's negligent performance of any of the services provided under this contract.

(e) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(f) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

#### **52.236-24 Work Oversight in Architect-Engineer Contracts.**

As prescribed in 36.102-4(c), insert the following clause:

**Work Oversight in Architect-Engineer Contracts (Apr 1984)**

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

**52.236-25 Requirements for Registration of Designers.**

As prescribed in 36.102-4(d), insert the following clause:

**Requirements for Registration of Designers (June 2003)**

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

**52.236-26 [Reserved (AUG 2025) (DEVIATION 25-15)]**

**52.236-27 [Reserved (AUG 2025) (DEVIATION 25-15)]**

**52.236-28 [Reserved (AUG 2025) (DEVIATION 25-15)]**