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Subpart 36.6—Architect-Engineer Services

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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.
- 36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.
- 36.702 Forms for use in contracting for architect-engineer services.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42356, Sept. 19, 1983, unless otherwise noted.

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.

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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.

[48 FR 42356, Sept. 19, 1983, as amended at 57 FR 55471, Nov. 25, 1992; 58 FR 12140, Mar. 2, 1993]

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).

[48 FR 42356, Sept. 19, 1983, as amended at 51 FR 36972, Oct. 16, 1986; 54 FR 13336, Mar. 31, 1989; 54 FR 19827, May 8, 1989; 56 FR 29128, June 25, 1991; 62 FR 272, Jan. 2, 1997; 64 FR 72432, Dec. 27, 1999; 66 FR 2132, Jan. 10, 2001]

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.

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 68 FR 28083, May 22, 2003]

36.104 Policy.

Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (40 U.S.C. 1101 *et seq.*) 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. 2305a or 41 U.S.C. 253m 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.

[62 FR 272, Jan. 2, 1997, as amended at 64 FR 72451, Dec. 27, 1999; 70 FR 57454, Sept. 30, 2005]

Subpart 36.2—Special Aspects of Contracting for Construction

36.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* (1) The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaluation (Construction Contracts), for each construction contract of—

- (i) \$550,000 or more; or
- (ii) More than \$10,000, if the contract was terminated for default.

(2) The report shall be prepared at the time of final acceptance of the work, at the time of contract termination, or at other times, as appropriate, in accordance with agency procedures. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* (1) Each performance report shall be distributed in accordance with agency procedures. One copy shall be included in the contract file. The contracting activity shall retain the report for at least six years after the date of the report.

(2) Before making a determination of responsibility in accordance with subpart 9.1, the contracting officer may