



SESSION GUIDE
SEASON 2023, EPISODE 21
FAR PARTS 36, 37, 41, & 48:
CONSTRUCTION, SERVICES, UTILITIES,
AND VALUE ENGINEERING

I. Introduction

This chapter brings us to a grab bag of topics that we have already briefly touched on, but have not discussed in depth. Specifically, we will talk about construction contracting (**Part 36**), contracting for services (**Part 37**), utilities contracting (**Part 41**), and something called “value engineering” (**Part 48**). The first three terms are pretty self-explanatory. We already know that the Government contracts for a lot of different goods and services, so it makes sense that we would have FAR Parts that are dedicated to some of the more frequently acquired (or more complicated) goods and services and how they should be procured. But what is value engineering? **48.101** tells us that it is the “formal technique by which contractors may 1) voluntarily suggest methods for performing more economically and share in any resulting savings or 2) be required to establish a program to identify and submit to the Government methods for performing more economically.” As we will discuss further below, the goal of value engineering is to incentivize (or require) the contractor to find ways to bring the cost of an acquisition down as much as possible, without compromising the essential workings and objectives of the acquisition. Basically, the Government wants the best bang for its buck—remember the Guiding Principles of the FAR?—so it has created methods like value engineering to ensure it receives just that.

II. Construction and Architect-Engineer Contracts

Remember **Part 14** and our discussions about sealed bidding? Here’s where that discussion really becomes relevant. Sealed bidding is predominantly used in construction contracting, so **Subparts 36.2 through 36.5**, which deal with construction contracting, often make reference to **Part 14**. They also make some reference to **Part 11**, which you may remember from our discussion of describing agency needs. These and other Parts of the FAR talked about construction in passing, so **Part 36** brings all those little pieces together into one big box.

A Blast from the Past

Question 1 – What subpart in FAR Part 22 is directly applicable to contracts for construction services?

Subpart 36.6 deals with architect-engineer services. The Government acquires those services by negotiation since they don't quite fit into the required situations for sealed bidding. Architect-engineer services are in the same FAR Part as construction contracting because such services don't exist in a vacuum; architects design construction projects, after all! Though one could probably argue that architect-engineer services actually belong in **Part 37** (Service Contracting), the drafters of the FAR decided to put them in **Part 36**. However, **Part 37** still has some bearing on architect-engineer services, so we will discuss that Part later in this chapter. We should also note that in the event of some kind of disagreement between **Part 36** and any other part of the FAR, **Part 36** will control. **36.101(b)**. (This "order of precedence language" applies only to construction and architect-engineer contracts, of course, since this Part doesn't apply to other contracts!)

Question 2 – FAR 36.102 notes that the Government may procure architect-engineer ("A&E") services separate from or combined with construction services. What is the name of the type of acquisition method used by the Government when these two types of service will be procured in a single contract?

A. Construction Contracts

We know that **Part 36** applies to all contracts for construction. But what do we mean when we say "construction?" Does it just mean the construction of buildings, or does it include things like roads too? Fortunately, **2.101** has us covered. Its definition of construction contains a non-exhaustive laundry list of projects that we should consider construction for the purposes of **Part 36** coverage. Essentially, if the project in question involves some kind of improvement to real property, or a building or structure on that property, it's construction. So yes, building or repairing roads (as well as other things like canals, tunnels, bridges, etc.) are included.

COs are required to use sealed bidding procedures for construction contracting, unless the proposed contract does not fulfill the requirements in **6.401(a)**, or if the contract will be performed outside the U.S. Most construction contracts fit within those requirements. So, most of the time, COs should use sealed bidding for construction contracts. To figure out what contract clauses apply in various construction contracting situations, we look to **36.5**. The FAR also helpfully provides a list of Standard and Optional Forms for us to use in **36.7**.

So how does this process actually work for construction contracts? Well, for starters, we look to the baseline sealed bidding procedures in **Part 14**. Since we have already discussed that Part, we will not rehash it here; if you need a refresher, though, you should go back to Chapter Eight of this Workbook and skim it again now.

We find the specific contracting processes for construction contracting in **36.2**. Most of **36.2** is just references to other relevant parts of the FAR; for example, **36.201** directs us to **42.1502(e)** for evaluation of contractor performance. However, there are a few portions of **36.2** that are more than simply a citation or a mild clarification. A minor example of this is in **36.204**, which requires the

Government to provide advance notice of the estimated magnitude of a construction requirement (though *not* of the Government’s estimate of the cost of that requirement!). But there are several subsections which create more significant duties beyond the usual contracting requirements, and also place further restrictions on construction contracting generally. **36.205**, which deals with statutory cost limitations, and **36.212**, which deals with preconstruction orientations, fall into the latter category, while **subsections 36.213 and 36.214** implement special procedures for sealed bidding and price negotiation, respectively, and thus fall into the former category.

Question 3 – What are the eight price ranges the Government can use to describe the estimated price of a proposed construction project? [Hint: check out **36.204**]

Subpart 36.3 brings us to something called two-phase design-build selection procedures. These procedures are to be used when offerors will have to perform some design work before developing any kind of cost or pricing proposal, and will thus incur significant expense just to formulate an offer. Other restrictions also apply to the use of these procedures, but that is the baseline requirement. **36.301(b)**. The CO should determine whether to use these selection procedures in the pre-acquisition planning stage (which, as you may recall, is addressed in FAR details **Part 7**). **36.301(a)**. The basis for selecting this unique process can be found at **36.301(b)**.

Phase One of the two step process includes the issuance of a scope work and evaluation of interested bidders “technical approach”, technical qualifications, and past performance. **36.303-1(a)**. The agency can do this on its own or it can contract to create the scope of work. **36.302**. The Government will also inform interested offerors in the solicitation how many contractors will be invited to compete in Phase 2. The maximum number of offerors invited to the second phase shall, as a general rule, not exceed five.

Offerors invited to Phase 2 will be required to submit technical and pricing information that will be evaluated by the Government in accordance with FAR Part 15 procurement methods. See e.g. **FAR 15.304 and FAR 15.4**. Examples of Phase 2 evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions. A contractor’s proposed price shall only be offered by the offeror and evaluated by the Government in Phase 2.

Another Blast from the Past

Question 4 – In what other section of the FAR have we already addressed a very similar “two step” procurement process?

B. Architect-Engineer Contracts

Architect-engineer contracts frequently act as a precursor to construction contracts. After all, we need to design the building before we can build it! Much of **Subpart 36.6**, which controls architect-engineer contracts, is made up of references to other Parts of the FAR. The portions which aren't merely references to other FAR Parts are primarily applications of overarching FAR principles to the specific situations surrounding architect-engineer contracting. For example, **36.601-1** applies publication requirements to architect-engineer contracts, and **36.601-2** applies competition requirements. Neither of these subsections make direct reference to other FAR Parts, but the influence of the rest of the FAR is clear. We are still working within the Guiding Principles of the FAR, so we can't simply ignore the rest of the FAR even when there is not direct reference to it. We can find the clauses applicable to architect-engineer contracts, as well as further reference to the rest of the FAR, in **36.609**.

Question 5 – According to **FAR 36.6**, what type of specific services should a CO consider to be “architect-engineer services” and therefore subject to **FAR Part 36** procurement processes?

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The selection process for architect-engineer contracts is a little different than the selection process for other types of contracting. We can find the selection criteria for architect-engineer firms in **36.602-1**. The Government also uses evaluation boards to approve each architect-engineer firm before the firm can receive a contract award. **36.602-2 and -3**. These boards use the procedures and criteria in **36.603**. After the evaluation board approves a list of firms, the agency's selection authority places those firms on a different list in order of the agency's preference, from most to least qualified to perform work. **36.602-4**. The selection authority can't add any firms to the evaluation board's original list, though; remember, a firm must be approved by the evaluation board to be eligible for contract award!

Once the selection authority finalizes the list of firms, the CO may begin negotiating with the top firm on the list. **36.606(a)**. At this point, the CO may also release information identifying the top firm and noting

that she will be negotiating with that firm. **36.607(a)**. Generally, the CO should simply request a proposal, so the solicitation does not accidentally preclude firms from proposing new and innovative design methods. There are several different issues the CO must discuss with the firm during negotiations, which are discussed in **36.606**. If the CO and the top firm cannot come to an agreement, the CO must get a final written proposal revision from the firm, and then inform the firm that negotiations have been terminated. The CO may then begin negotiating with the next firm on the list and repeat the steps in **36.606** and **36.607** until an agreement is reached. **36.606(f)**.

Note that if a firm is awarded an architect-engineer contract to design a project, that same firm *cannot* be awarded a construction contract for that same project, unless we are using the two-phase design-build procedures we talked about earlier. **36.606(c)**. This is because of the Organizational Conflict of Interest principles set forth in Subpart 9.5. The Government wants to ensure that it is getting a product that is in the Government's (not the architect/construction contractor's) best interest. We do not want design firms to create designs only they can build; that would be counter to the Guiding Principles of the FAR.

*Question 6 – Who can be held liable if the Government incurs costs as a result of an error or deficiency in a design resulting from an architect-engineer contract? [Hint: check out **36.608**]*

III. Service Contracting

As promised, we now come to our discussion of more general contracting for services. **Part 37** applies to all contracts for services, including the architect-engineering services we discussed above. We learned about the technical aspects of architect-engineering services in that section; now we will learn about the non-technical aspects of service contracting. But what are services? For the purposes of the FAR, service contracts are contracts with the primary purpose of performing an identifiable task rather than furnishing some end item of supply. **37.101**. These tasks include everything from maintenance to childcare to research. Setting expectations regarding the required level of performance needed to satisfy the Government's needs is important in services contracts. One of the ways to ensure that is to adopt performance-based acquisition procedures. **37.102(a)**. We already have some knowledge about restrictions on services under the FAR. For example, we know the Government can't contract out inherently governmental functions, per **Part 7**. But the procurement of services reaches far beyond that.

A. General Policies and Procedures

As we noted, the Government usually procures services using performance-based acquisition (or, at least, that is the goal). But what does that look like? Basically, in a performance-based acquisition the Government describes the end result that it wants, but doesn't prescribe how the contractor should achieve that result. As a trivial example, the Government could prescribe that the grass on the agency

lawn should never be more than 1-1/2 inches high – rather than saying that the lawn should be mowed once a week, or that it should be mowed by 4 workmen with 10hp mowers.

In addition, there is an order of preference for types of contracts the Government uses to acquire services. In order of most preferred to least preferred, the contract types are 1) firm-fixed-price performance-based contract or task order, 2) performance-based contract or task order that is not firm-fixed-price, and 3) non-performance-based contract or task order. **37.102(a)(2)**. When procuring any services, regardless of the contract type used, agency officials should be sure to accurately and fully describe their agencies' needs. **37.102(d)**. They also must be sure to establish effective management practices so their service contracts do not fall victim to fraud, waste, or other abuse. **37.102(f)**. And as always, agencies should acquire services in the most cost-effective manner possible, using as much free and open competition as possible, without conflicts of interest. **37.102(g)**. The CO is primarily responsible for ensuring that contracts adhere to these requirements, as well as many of the other requirements we will explore later in this chapter. **37.103**. We can find a rundown of the specific performance-based acquisition policies and procedures in **37.6**, and methods of managing services contracts in **37.5**.

*Question 7 – What four types of services are excepted from the general requirement to use performance-based acquisition methods? [Hint: check out **37.102(a)**]*

There are two overarching categories of services: personal and nonpersonal. Personal services contracts essentially allow the Government to treat contractor personnel as if they were Government employees. **37.104(a)**. Nonpersonal services are, unsurprisingly, anything that doesn't fall under the personal services umbrella. Personal services contracts are frowned on; the concern is that an agency may use such a contract to bypass hiring ceilings or Civil Service hiring procedures. Agencies can only use personal services contracts when expressly authorized by statute (**37.104(b)**); even when authorized, contracting personnel should seek legal advice before proceeding (**37.104(e)**). Since this authorization is important, **37.104(d)** contains a list of criteria to help us determine whether a contract is for personal services or not. The same baseline service contracting requirements, such as the regulations regarding uncompensated overtime in **37.115**, will apply to both categories of services, but personal services contracts will require more scrutiny and approval than nonpersonal services contracts.

Most of the rest of **37.1** is concerned with specific applications of other statutes and regulations to service contracts. Interestingly, the FAR indicates a preference for using sealed bidding to award most kinds of service contracts. **37.105(a)**. Whether a contract may span fiscal years depends on how the contract will be funded, and to some extent on which agency is procuring the services. **37.106**. We can find out which contract clauses apply in which situations using **37.110**.

B. Special Types of Services

We've already talked about architect-engineer services, which are a special subcategory of services. But **Part 37** details other subcategories of services as well. Those subcategories include advisory and assistance services (**37.2**); dismantling, demolition, or removal of improvements (**37.3**); and nonpersonal health care services (**37.4**). The requirements in the rest of **Part 37**—and, of course, in the rest of the FAR—still apply to these special types of services, but those requirements do not necessarily cover all the issues relevant to special services. Thus, these Subparts contain additional guidance for specific situations.

Advisory and assistance services are intended to improve Government services and operations, per **37.203(a)**. They are used for a variety of goals, including obtaining expert advice, obtaining advice regarding industry developments, and enhancing understanding of complex issues. **37.203(b)**. There are also certain goals advisory and assistance services may not be used to accomplish, including (but not limited to) “inherently governmental functions.” These include performing work that is the responsibility of agency officials, being used to specifically influence or enact legislation, and being used to obtain professional or technical advice that is already available within the Government. **37.203(c)**. To avoid that last pitfall we mentioned, we turn to **37.204**, which gives us guidelines for determining availability of personnel within the Government.

Dismantling, demolition, and removal of improvements are exactly what they sound like. So why do they need their own Subpart? They need their own Subpart because these services are closely related to construction contracting. As we know, construction contracting has its own Part of the FAR, and is also governed by many statutes. Thus, **37.3** folds in some of those *construction* requirements into *destruction*. It also applies various bonding (**37.302**) and labor standards (**37.301**) requirements to this subcategory of service contracting.

Nonpersonal health care services are simply health care services procured using nonpersonal services contracts. That is, the Government does not exercise employer-like control over the doctor, dentist, or other health care provider. Instead, the Government contracts for health care services to be performed, but then ultimately leaves the medical and professional performance of those services up to the providers. **37.401(b)**. COs should insert the clause at **52.237-7** into this subcategory of service contracts. **37.403**.

IV. Acquisition of Utility Services

In our modern world, we use a lot of utilities. Running water, electricity, and garbage removal are all considered utilities under the FAR. Our world would be very different and far less comfortable and convenient without these utilities. Thus, the FAR has devoted an entire Part to these issues—**Part 41**. This Part applies to all parts of utility service acquisition for the Government, to include connection charges and termination liabilities. **41.102(a)**. (If you've ever tried to change or cancel a cable TV contract, you are probably familiar with both these problems!) There are some exceptions, though, such as utilities provided by another federal agency and utilities acquired in foreign countries. **41.102(b)**. We

can find guidelines regarding administration of these contracts in **41.4**, and guidance regarding the applicable contract clauses in **41.5**.

A. Direct Agreements with Utilities Providers

As usual, the FAR dictates that the Government should acquire utilities from sources that are most advantageous to the Government. This advantage can come in the form of economy, efficiency, reliability, or service. **41.201(a)**. The Government acquires utilities from private sources using bilateral written contracts (and using competition to the maximum extent possible, of course). Your average citizen can't do that, of course; as we all have experienced, utilities companies usually provide their services on a "take it or leave it" basis using premade form contracts. (This is called an "adhesion contract" in the legal realm). However, various statutes require Government agencies to include specific contract provisions and clauses, so the Government must negotiate bilateral written contracts.

41.201(b). There is some difficulty when it comes to electric utility services, though, because many electricity providers are state-regulated and the FAR's usual competition requirements might run afoul of those regulations. Thus, when acquiring electric utilities, COs should obtain the advice of legal counsel. **41.201(e)**.

Question 8 – What happens if a utility supplier refuses to execute a written contract? [Hint: check out **41.202(c)**]

Acquiring utilities services can be pretty tricky. Sometimes even Government agencies need help with it! The GSA happens to have a fair amount of expertise in this area, which we will explore in the next section. Because of that expertise, agencies can request assistance from the GSA in acquiring utilities services. There are several timeliness requirements for these requests; the most important requirement is for agencies to submit requests *at least* 120 days prior to the date on which they will require new services. **41.301(b)**. These requests must contain specific and detailed information regarding the requesting agency's needs. We can find the information the GSA requires in **41.301(b) and (c)**.

B. Alternative Sources

To no one's surprise, all the usual competition and acquisition planning requirements in **Parts 6 and 7**, respectively, apply to any acquisition of utilities. **41.202(a)**. However, **Part 41** has some additional considerations because of the somewhat odd nature of acquiring utilities services. In fact, it requires COs to consider three alternative sources instead of simply plunging into the free market. These three sources are GSA areawide contracts, interagency agreements, and separate contracts. **41.202(b)**.

The GSA enters into various areawide contracts for other federal agencies to use. **41.204(a)**. These contracts establish a convenient (and often less expensive) vehicle for ordering utilities, much like the Federal Supply Schedule establishes a vehicle for ordering supplies. The GSA's areawide contracts cover specific geographical areas. If the requiring activity is located within a geographical area covered by one of the GSA's contracts, the activity should generally use the GSA contract. **41.204(c)(1)**. Agencies can request a list of covered areas from the GSA's Energy Division. **41.204(d)**. If no areawide contract exists, or if the areawide contracts present will not fulfill the agencies' needs, then agencies can use interagency agreements between each other instead. **41.206**. These agreements allow agencies to acquire utilities services from each other and to work together to acquire such services from outside sources. In the absence of both of these options, agencies can turn to separate contracts. **41.205(a)**. Remember, the Government wants to keep its costs down, so COs shouldn't just go with the phone/internet/cable/widget bundle. Instead, they should seek out the best value. Maybe the bundle will be the best value, but if not, separate contracts are the way to go. **41.205**.

Question 9 – What seven pieces of information should a CO put in the contract file for a separate contract?

V. Value Engineering

Our final topic in this chapter is value engineering, which **Part 48** details. As you now know, value engineering is a term of art that means encouraging contractors to find new ways to perform economically. There are two approaches to value engineering: the incentive approach and the mandatory program approach, which function as a carrot and a stick, respectively. **48.101(b)**. The incentive approach allows contractors to voluntarily suggest methods for performing more economically, and also allows them to share in the resulting savings. **48.101(b)(1)**. The mandatory program approach involves the Government requiring and paying for specific value engineering program efforts. Contractors can still share in the savings resulting from this approach, but at a much lower percentage than the incentive approach. **48.101(b)(2)**.

The proposals that come from value engineering are called value engineering change proposals, or VECPs. **48.001**. These VECPs (predictably) change something about the contract, such as manufacturing method. The change saves money, and then the Government and contractor split the savings in some fashion. We can find guidance regarding which contract clauses to use in **48.2**.

Agencies must establish and maintain cost-effective value engineering procedures and processes; this is actually required by statute. **48.102(a)**. But why the emphasis on cost-effective? Isn't saving money

always cost-effective? Not necessarily. Think of it this way: maybe gas is 10 cents cheaper per gallon in a town 30 miles away. But suppose you drive an SUV. Not only will you have to drive an extra 60 miles round trip to get to this extra-cheap gas, you won't actually save any money by making that drive because you'll use up so much gas to get there and back! You might save some money if you drove a very small hybrid car, but not if you drive a big SUV. It just wouldn't be cost-effective. Value engineering is much the same. The whole operation has to result in a savings to the Government. A small savings on one contract is not enough to justify an expensive value engineering program. That said, good value engineering policies and procedures do result in a savings to the Government, so much so that agencies *must* establish them, as we noted. The process has to be objective, expeditious, and fair from beginning to end. **48.102(b)**. Additionally, agencies should consider incorporating value engineering clauses in some contracts to maximize the savings. **48.102(c)**.

So how do we treat value engineering incentive payments to contractors? Are those considered a profit or a fee? No. In fact, several statutes specifically indicate that this is not the case. **48.102(e)**. Further, profit or fee on a contract generally should not be adjusted downward as a result of the parties' acceptance of a VECP. **48.102(f)**. This makes sense, because adjusting profit downward as a result of a VECP would definitely incentivize against participating in value engineering! Incidentally, this can result in a fee that exceeds an applicable fee ceiling for cost-reimbursement contracts. However, the amount of savings sharing does vary from contract to contract; just because a contractor has participated in value engineering does not mean it will always receive a certain amount. COs are ultimately the ones who determine the sharing periods (**48.104-1**) and sharing rates (**48.104-2**) for the savings, and must document their reasoning for the periods and rates they settle on. **48.102(g)**. The Government also usually shares collateral savings with contractors, but uses a different method of determining how the sharing works. **48.104-3**.

Question 10 – What is the supporting rationale COs should document when determining sharing periods and rates? [Hint: it's actually seven things!]

Discussion Questions

1. Review the following scenarios and identify whether the procurement is for construction services, architect-engineer services, personal services, or non-personal services. [Hint: Some of your answer may be found in the Original Source materials]

The GSA hires a firm to design an office building that can support a specialized centrifuge.

The GSA hires a firm to build a six floor office building with a special foundation to allow a specialized centrifuge to be run in the basement.

An agency hires a contractor to provide clerical services to their primary staff attorneys, to avoid hiring paralegals into that role.

An agency hires a contractor to deliver packages between two remote sites for 2 years, until proper infrastructure is established.

2. What is the difference between a Type 1 and Type 2 differing site condition? What can the Government do to avoid unnecessary differing site claims? [Hint: Check out **FAR 52.236-2 and FAR 52.236-3 and 52.236-4**]

3. What must be included in ALL performance-based contracts for services? [Hint: Check out **FAR 37.6**]

4. How can an agency prevent a nonpersonal services contract from becoming a services contract?
[Hint: check out **FAR 37.104** and the Original Source materials]

5. What is the order of precedence for the selection of contract type in an acquisition for services?
[Hint: check out **FAR 37.102**]

6. What three agencies have specific statutory authority related to acquiring utility services? What do their respective authorities cover? [Hint: check out **41.103(a)**]

7. True or False? Value Engineering sharing is NOT permitted in architect-engineering contracts.
Explain your answer.

8. **FAR Question:** Demolition services are a type of service expressly covered and addressed by FAR Part 37.3. What is the Contractor entitled to as “payment” when the covered contract includes FAR clause **52.237-4**?

Answer Key

Answer 1 – Any review of contract administration guidance for construction contracts should always include not only FAR Part 36 but also the wage and compensation rules set forth at FAR 22.4 and FAR 22.5.

Answer 2 – As noted at FAR 36.102 that acquisition method is known as “design-build”.

Answer 3 – (1) Less than \$25,000, (2) Between \$25,000 and \$100,000, (3) Between \$100,000 and \$250,000, (4) Between \$250,000 and \$500,000, (5) Between \$500,000 and \$1,000,000, (6) Between \$1,000,000 and \$5,000,000, (7) Between \$5,000,000 and \$10,000,000, and (8) More than \$10,000,000.

Answer 4 – That other “two step” bidding process can be found at FAR 14.5.

Answer 5 – (1) For facility design contracts, the statement of work shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications. 2) Facility design solicitations and contracts that include the specification of energy-consuming products must comply with the requirements - When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer - Other than "incidental services" as specified in the definition of architect-engineer services in 2.101 and in 36.601-4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those service.

Answer 6 – The A&E contractor may be held liable damages arising from errors or deficiencies in the design provided to the construction contractor during the performance of a construction contract.

Answer 7 – The four types of services that are not subject to the acquisition rules set forth at FAR Part 37 are (i) A&E services, (ii) construction services, (iii) utility services, and (iv) services that are “incidental” to supply purchases.

Answer 8 – When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41.301(a). After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C.1501(a)(8).

Answer 9 – The CO should include (i) the number of available suppliers, (ii) any special equipment, service reliability, or facility requirements and related costs, (iii) the utility supplier's rates, connection charges, and termination liability, (iv) total estimated contract value (including costs in paragraphs (b)(2) and (3) of this subsection), (v) any technical or special contract terms required, (vi) any unusual characteristics of services required, and (vii) the utility's wheeling or transportation policy for utility service.

Answer 10 – The CO should document the following when determining sharing periods and rates under a contract that contains a VECP contract clause: (i) extent of the change, (ii) complexity of the change, (iii) development risk, (iv) development cost, (v) performance and/or reliability impact, (vi) production period remaining at the time of VECP acceptance, and (vii) number of units affected.

Discussion Questions Answer Key

1. Architect-Engineer Services
Construction
Personal Services
Non-Personal Services
2. (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract. Conduct site investigations to identify conditions that may affect work and present physical data.
3. All performance based services contracts must contain a (i) performance work statement (“PWS”) that contains functional/performance specifications, (ii) measurable performance “standards” in terms of quality, (iii) the method of assessing the contractor’s performance against the standard, and (iv) incentives.
4. The CO should refer to and understand the guidance set forth at FAR 37.104(d) for the critical factors that may cause a contract to be deemed a “personal services” contract.
5. The order of preference is as follows: (i) a firm fixed price performance based contract or task order, (ii) a performance based contract or task order that is not firm fixed price and (iii) a contract or task order that is not performance based.
6. The GSA, DoD, and DoE all have specific statutory authority to enter into utility services contract.
7. True, value engineering sharing is not permitted in A&E contracts.
8. Under that circumstance, the contractor is entitled to monetary payment and title to any property that the CO did not determine will be retained by the Government.

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

[GSA Utility Areawide Guide](#)

The General Services Administration Public Building Service Energy Division's practice guide to procuring utility services through a GSA areawide contract. This provides guidance and best practices to utility areawide contracting, master blanket contract for public utility services.

[OFPP Policy Letter 93-1](#)

Office of Federal Procurement Policy letter from 1994 regarding management oversight of service contracting. The letter established the government-wide policy, assigned responsibilities, and provided guiding principles for Executive Departments and agencies in managing the acquisitions and use of services.

[Personal Services Contracting Quick Guide](#)

Personal Services contracts quick reference guide for CORs providing a summary overview of a key topic in acquisition, with a focus on the COR perspective. The quick reference guide covers what a personal services contract is, the relevant government policies, employer-employee relationships, what the government should consider and how an agency should interact with personal services contracts.

[SD 24 Value Engineering Guidebook](#)

Office of Deputy Assistance Secretary of Defense Systems Engineering guidebook of best practices and tools for value engineer (VE) from 2011. The guidebook shows how VE can be an effective mechanism for generating cost savings or cost avoidance for contractors and the US Government, gives details on the basics of VE methodology, discusses how to establish a VE program, describes best practices and provides an overview of the benefits of VE programs.

[Seven Steps to Performance-Based Acquisition](#)

An interagency-industry guides to performance-based services acquisition. The guide outlines seven (7) steps for best practices when working in performance-based services acquisition in line with the Government Performance and Results Act of 1996, the Federal Acquisition Streamlining Act of 1994, and the Clinger-Cohen Act of 1996.

USACE Architect-Engineer Contracting Guide – [Part 1](#) and [Part 2](#)

US Army Corps of Engineers 2012 pamphlet to provide guidance and procedures for contracting for architect-engineer (A-E) services in accordance with the Brooks Architect-Engineer Act and the acquisition regulations. The pamphlet provides guidance, regulations, and procedures for implementing key portions of overall A-E acquisition regulations.

FUN WITH THE FAR
Episode 21
FAR Parts 36, 37, 41, & 48
Summary Outline

- I. Introduction**

- II. FAR PART 36**
 - A. General Observations**

 - B. Construction Contracts**

 - C. Architect-Engineer Contracts**

- III. FAR PART 37**
 - A. General Observations**

 - B. Types of Service Contracting**

- IV. FAR PART 41**
 - A. General Observations**

 - B. How to Contract for Utilities**

- V. FAR PART 48**
 - A. General Observations**

 - B. The Inner Workings of Value Engineering**

- VI. Closing Remarks**