

SECTION 4-1 ACQUISITION PLANNING

4-1-00	Policy
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4-1-00 POLICY

In accordance with FAR Part 7 and HHS policy, OPDIVS shall perform acquisition planning for all acquisitions in order to provide for -

- Acquisition of commercial items or, to the extent that commercial items suitable to meet the Government's needs are not available, non-developmental items, to the maximum extent practicable; and
- Full and open competition or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

Acquisition planning for federally-owned real property assets shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. In order to facilitate attainment of the acquisition objectives, the plan should identify those milestones at which decisions should be made. The plan should address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. The acquisition plan should include the following:

- Acquisition background and objectives that includes statement of need; applicable condition; life-cycle cost; performance characteristics; trade-offs; risks; and acquisition streamlining;
- Plans of action that includes sources, competition, source-selection procedures, acquisition considerations, budgeting and funding, product or service descriptions, priorities, allocations, and allotments, contractor versus government performance, inherently governmental functions, logistics considerations, government-furnished property, government-furnished information, environmental and energy conservation objectives, security considerations, contract administration, other considerations, and milestones for the acquisition cycle.

4-1-10 PROCEDURES

Acquisition planning should begin as soon as the OPDIV need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. In developing the plan, the OPDIV forms a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, professional and technical personnel. The OPDIV should review the plan and if appropriate revise it at key dates specified in the plan, whenever significant changes occur, and no less often than annually. Requirements personnel (customer and users) should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition, increases prices, and increases project risks. Early in the planning process, the Project Officer should consult with the customer or user who determines type, quality, quantity, and delivery requirements. As part of developing an acquisition strategy OPDIVs are encouraged to use the Construction Industry Institute (CII) Project Delivery Contract Strategy (PDCS) to evaluate alternate project management delivery mechanisms. Design-Build must be considered as a preferred strategy in the evaluation.

The evaluation through PDCS or a similar tool shall be forwarded with the Facility Project Approval Agreement (FPAA) on all projects requiring Department approval.

The Project Officer should coordinate with and secure the concurrence of the Contracting Officer in all acquisition planning. If the plan proposes using other than full and open competition when awarding a contract, the plan shall also be coordinated with the Competition Advocate as required in the Competition in Contracting Act (CICA). The acquisition plan or strategy must be coordinated with the Small Business and Disadvantaged Business Utilization Specialist (SADBUS).

4-1-20 GUIDANCE AND INFORMATION

A. CONTRACT TYPES

In acquisition planning, determining the type of contract early in the process is important. A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to-

- The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

The contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts.

The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

1. Firm Fixed Price Contract: A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The Contracting Officer may use a firm-fixed-price contract in conjunction with an award-fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost.
2. Cost-Reimbursement Contracts: Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer. There are several cost reimbursement type contracts allowed under the FAR.
 - a. Cost Contracts: A cost contract is a cost-reimbursement contract in which the contractor receives no fee.
 - b. Cost-Sharing Contracts: A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allow-

able costs. A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

- c. Cost-Plus-Incentive-Fee Contracts: A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.
- d. Cost-Plus-Award-Fee Contracts: A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (a) a base amount (which may be zero) fixed at inception of the contract and (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance.
- e. Cost-Plus-Fixed-Fee Contracts: A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

B. INDEFINITE-DELIVERY CONTRACTS

There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

1. The various types of indefinite-delivery contracts offer the following advantages. All three types permit-
 - a. Government stocks to be maintained at minimum levels; and
 - b. Direct shipment to users.
2. Indefinite-quantity contracts and requirements contracts also permit-
 - a. Flexibility in both quantities and delivery scheduling; and
 - b. Ordering of supplies or services after requirements materialize.
3. Indefinite-quantity contracts limit the Government's obligation to the minimum quantity specified in the contract.
4. Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.
5. Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under FAR Part 16, Cost or pricing arrangements that provide for an estimated quantity of supplies or services (*e.g.*, estimated number of labor hours).
6. A/Es should be selected for discrete tasks based on qualifications in accordance with FAR Part 36.

C. HHSAR - PART 307

Acquisition plans should include applicable provision of HHSAR Part 307 HHS Acquisition Plans.

4-1-30 REPORTING REQUIREMENTS

On projects requiring the Department's approval, a submittal of the Acquisition Plan is not required. However, the analysis/documentation supporting the chosen acquisition methodology using PDCS or a similar tool shall be forwarded to OFMP with the initial FPAA submittal. OFMP may require that the OPDIV submit the detailed acquisition plan as additional justification.

SECTION 4-2 REAL ESTATE ACQUISITION

4-2-00	Policy
10	Procedures
20	(Reserved)
30	(Reserved)

4-2-00 POLICY

The purpose of this section is to establish HHS policy for the acquisition of real property through purchase, donation or transfer. The acquisition of real property through leasing is addressed in Section 4-7.

When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner in accordance with the Federal Management Regulation (FMR) §102-73. It is HHS policy that (a) only such real property as is needed for effective program operation be acquired, and then only after requisite authorization and clearances; (b) private property may be acquired or improvements constructed only if suitable Government-owned facilities are not available; and (c) wherever practicable, HHS activities in the same city or town should be located in the same building.

No agency or element of HHS will undertake any discussion of prospective geographical areas or locations for sites or facilities with persons outside the Department without the approval of the Assistant Secretary for Administration and Management (ASAM), OS if the area under consideration extends into more than one region.

A. BASIC ACQUISITION AUTHORITIES

The principal statutes authorizing the acquisition of land and the provision of space are the following:

1. Section 304(b)(4) of the PHS Act (42 U.S.C. 242b) authorizes the Secretary of HHS to acquire, construct, improve, repair, operate, and maintain laboratory, research and other necessary facilities and equipment, and such other real or personal property as the Secretary deems necessary for health statistical activities and health services research, evaluation, and demonstrations.
2. Section 321 of the PHS Act (42 U.S.C. 248) authorizes the Secretary, with the approval of the President, to select sites for and to establish such institutions, hospitals, and stations as are necessary to enable HHS to discharge its functions and duties. The President's authority to approve facilities has been delegated by him to the Director of the Office of Management and Budget (OMB).
3. Section 413(b)(6)(A) of the PHS Act (42 U.S.C. 285a-2) authorizes the Director of the National Cancer Institute (NCI), NIH/HHS (in consultation with the advisory council for the Institute) to acquire, construct, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director determines necessary.
4. Section 413(a) of the PHS Act (42 U.S.C. 285b-3) authorizes the Director of the National Heart, Lung, And Blood Institute (NHLBI), NIH/HHS (after consultation with the National Heart and Lung Advisory Counsel) to acquire such real property as may be necessary.
5. Section 386 of the PHS Act (42 U.S.C. 286a-1) authorizes the Administrator of General Services to acquire suitable sites, selected by the Secretary of HHS in accordance with the directions of the Board of Regents of the National Library of Medicine (NLM), NIH/HHS and to erect thereon,

furnish, and equip suitable and adequate buildings and facilities for NLM. It also authorizes appropriations for the erection and equipment of buildings and facilities for the use of the Library.

6. Section 13 of Public Law 67-85 (known as the Snyder Act) (25 U.S.C. 13) authorized the Bureau of Indian Affairs to expand, improve, repair, operate and maintain buildings and grounds of existing plants and projects and irrigation systems and develop water supplies serving Indians.
7. Section 7 of Public Law 83-568 (known as the Indian Health Transfer Act) as amended (42 U.S.C. 2004), transferred authority for the construction, improvement, and extension of buildings and grounds and sanitation systems to serve Indians including the acquisition of lands, or rights or interests therein, to the Public Health Service of the Department of Health and Human Services.
8. Section 402(b)(4)(A) of the PHS Act (42 U.S.C. 282(b)(4)(A)) provides land acquisition authority to the Director of the National Institutes of Health (NIH).
9. Section 464P(b)(3) of the PHS Act (42 U.S.C. 285o-4(b)(3)) provided land acquisition authority to the Director of the National Institute of Drug Abuse (NIDA) in certain circumstances.

B. TITLE TO FEDERAL REAL PROPERTY

With certain minor exceptions, title to all Federal real property is held in the name of the United States of America. The HHS does not hold title to any real property in its own name. That is so because neither the HHS nor any official thereof has the statutory authority to hold title to real property, such as do certain Government corporations and officials of certain agencies in connection with their lending authorities.

Title to real property acquired by the HHS is taken in the name of the United States of America, and the deed transferring such title is recorded in the appropriate local land records. Transfers of control and accountability to or from other Government agencies are not so recorded because title thereto continues to be vested in the United States of America. Such transfers are usually made administratively through the General Services Administration (GSA).

There is no general repository of Federal land records for lands owned by the United States, although GSA maintains an inventory based on data submitted by the agencies having control and accountability (see Section 2-6, Real Property Inventory Reporting Requirements). Verify this reference, 2-6 is Site Selection in Volume 1. This emphasizes the importance of HHS keeping accurate and complete records of its real property holdings. They play an important role in determining whether the real property is effectively utilized and whether statutes and regulations are fully executed.

There are a few statutes, such as section 321 of the PHS Act (42 U.S.C. 248), authorizing HHS to acquire sites and to construct facilities so that it may carry out its functions. Such space, wholly or predominantly used for the special purposes of HHS and not generally suitable for the use of other agencies, is referred to as "special purpose" space. Other space, primarily space used for office or storage purposes, is called "general purpose" space. Generally, such space is acquired by GSA and administratively assigned to HHS.

4-2-10 PROCEDURES

A. ACQUISITION BY PURCHASE

All acquisitions of land require specific statutory authority, 41 U.S.C. 14, and specifically designated funding in an OPDIV's budget and/or appropriation. All land acquisitions must be submitted to and approved by the HHS Capital Investment Review Board. See also Section 2-1 Funding Sources for Facilities Projects.

After the Secretary concurs that the Department will acquire the property under its own authority, and after adequate funds are apportioned for such a purpose, the HHS OPDIV will proceed with the purchase. Generally all acquisitions of land or buildings and the underlying land, should be accomplished by the OPDIVs consistent with the “Department of Justice Title Standards 2001,” which is also available online at the Department of Justice (DOJ) web site. The land acquisition process is conducted and staffed by the OPDIV acquiring the real property.

The OPDIV will obtain, from the owner(s) of the property, for a period of at least 90 days, an option to purchase the preferred site, subject to the establishment of just compensation by appraisal in accordance with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (P.L. 91-646).

An appraiser, approved by the U.S. Attorney having jurisdiction over the area in which the property is located, will be used to establish the amount which he/she believes to be just compensation. The cost of the appraisal will be determined by negotiation.

After a price has been agreed to, the OPDIV will coordinate the acquisition with the Office of the General Counsel (OGC) and/or the Office of Chief Counsel who will play a vital advisory role in all real property acquisitions. As advisors, OGC and the Office of Chief Counsels provide legal advice as requested by the OPDIVs throughout the process, prepare and execute requests to DOJ for required Preliminary and Final DOJ Title Opinions, and if requested, would assist in drafting such documents as the “contract of sale” and the draft deed.

The OPDIV will prepare the necessary purchase commitment documents consisting of (1) contract of sale, (2) draft of deed, (3) authority to execute the deed, (4) title policy commitment, and (5) a survey prepared by a registered surveyor.

After receiving advice from the Attorney General that the site acquisition documents are complete, including a satisfactory title opinion, payment, by U.S. Treasury check, may be made. The original site purchase documents will be retained by the OPDIV, with a CD-ROM copy provided to OFMP, after they are recorded with the registry of deed in the area where the property is located.

B. PURCHASE OF BUILDINGS

The purchase of buildings shall be in accordance with the FMR §102-73.240 through 73.250 including compliance with the location policies in FMR §102-73 and §102-83. See Exhibit X4-7-A for guidance on Suggested Award Factors & Evaluation of Buildings and Sites.

C. PURCHASE OF LAND

The purchase of land shall be in accordance with FMR §102-73.255 through 73.260 and shall follow the land acquisition policy in the Uniform Relocation Assistance and Real Property Acquisition Polices Act, 42 U.S.C. 4651-4655. See Section 2-6 Site Selection for guidance on evaluating sites for purchase.

D. ACQUISITION BY DONATION

1. Donations of Real Property: The procedures for acquiring real property by gift or donation are set forth in this section. The sequential steps relating to acquisition by purchase will generally be followed. Although statutory authority to accept gifts obviates the need for returning to the Treasury an amount equal to the value of the gift, an appraisal is required. The cost of the ap-

praisal must be borne by the OPDIV. OGC will review the formal offer of donation prior to requesting a title opinion from the Attorney General. The opinion must be received before the land is accepted on behalf of the United States.

On October 11, 2005, the Secretary delegated authority to the Assistant Secretary for Administration and Management (ASAM) to accept gifts of real property under Section 231 of the Public Health Service Act (42 U.S.C. 238) and 25 U.S.C. 451, as amended. ASAM redelegated this authority to the Deputy Assistant Secretary for Facilities Management and Policy on October 21, 2005.

HHS Procedures for Processing Offers of Gifts of Real Property:

- The applicable HHS OPDIV presents the offering organization's formal written proposal of gift of real property and the OPDIV's program analysis to OFMP for review. The program analysis must contain supporting documentation that the gift is mission related, mission dependent, and does not constitute a conflict of interest. Any conditions regarding Departmental acceptance or use must also be clearly identified.
 - If OPDIV program analysis supports and recommends acceptance, and OFMP is in agreement, OFMP will transmit the written offer and program analysis document to OGC for a legal opinion of the offer. OGC will review the offer and analysis to determine whether the proposed donation of land is within the Department's statutory gift acceptance authority and to assess if any legal requirements, conditions or encumbrances are imposed on the Department by acceptance of the gift.
 - If HQ offices concur, and the gift has a value of \$10 million or involves land acquisition, the proposal is presented to the Capital Investment Review Board for approval. If the Board approves, the delegation procedure noted below will be implemented by OFMP.
 - If HQ offices concur and the gift is valued at less than \$10 million and land acquisition is not part of the gift, OFMP will issue a specific delegation of authority to the applicable PHS agency to accept the gift of real property in accordance with all Departmental policies, procedures, and requirements outlined in the HHS Facilities Program Manual Volume 2 and Federal regulations and statutes.
2. Section 231 of the Public Health Service Act (42 U.S.C. 238) and 25 U.S.C. 451, as amended are the overriding statutes authorizing the acceptance of gifts of real property (usually unconditional but sometimes conditional) by or on behalf of HHS. Additional relevant statutes include:
- a. 42 USC 289f authorizes the Secretary of HHS to accept conditional gifts, including real property, for the benefit of the National Institutes of Health.
 - b. Section 22 of the Occupational Safety and Health Act (29 U.S.C. 671) authorizes the Director of the National Institute of Occupational Safety and Health, CDC/HHS to accept conditional or unconditional gifts for the benefit of the Institute.

E. ACQUISITION BY TRANSFER

Property which is excess to the needs of another department of agency of the Government may be requested for use by HHS when the requirements of acquisition set forth herein are met, and it has been established that the transfer will prove more economical over a sustained period of time than the acquisition of a new facility specifically designed to satisfy the program requirement. Transfer of property must be made under the Federal Property and Administrative Services Act of 1949 and FMR §102-75 including the requirement for 100% reimbursement, except as noted otherwise.

The OPDIV will be responsible for initiating the transfer request, obtaining program approvals and funding commitments, and preparing the Request for Transfer (GSA Form 1334). A copy of the Request for Transfer, together with supporting documents, will be forwarded to OFMP concurrently with the OPDIV's submittal to GSA.

SECTION 4-3: PROJECT DESIGN REVIEW

4-3-00	Policy
10	Procedures
20	Guidance and Information
30	(Reserved)

4-3-00 POLICY

The purpose of this section is to provide general guidance to the OPDIVS for reviewing projects during the design phase. This policy applies to federally-owned real property assets.

The OPDIV has the overall responsibility to provide Government oversight for the design of an HHS facility. The OPDIV review and comment on the Architect/Engineers (A/E) design submittal is vital to the success of the project.

The A/E is contractually responsible to design the project within the specified scope, budget and schedule. This is not only a Government requirement, but it is a common practice within the industry. The OPDIV shall ensure that the A/E fulfills their contractual responsibility to deliver a design of the approved HHS facility within Scope, Budget and Schedule.

4-3-10 PROCEDURES

The OPDIV determines the number of design submittals based on size and complexity of the project. The Project Officer (PO) holds and chairs design review meetings with technical and program review staffs at each specified design submittal stage. The A/E and the PO shall certify that the Project is within the Scope, Schedule and Budget per the approved FPPA at each submittal. If a submittal is found to be deficient and does not meet contractual obligations, the Government must reject the submittal. The A/E will revise and resubmit the submittal at No Additional Cost to the Government.

4-3-20 GUIDANCE AND INFORMATION

ROLES AND RESPONSIBILITIES

A. Architect/Engineer - The A/E shall submit completed progress designs in accordance with their contract to the Government for review and comment. The OPDIV shall require their A/E to provide the following minimum milestone submittals for all projects with a cost of \$ 5,000,000 or more:

1. Schematic Design
2. Design Development
3. Construction Documents

The A/E shall not proceed to the next phase of project design until written approval of the current submittal is received from the approval authority.

B. Project Officer - The Project Officer (PO) serves as the Contracting Officer's Technical Representative (COTR). The PO leads, directs and controls the Government's activities as they relate to the design review of an HHS facility. The PO is the focal point for the Government and as the COTR, the PO serves as the Government's authorized representative with respect to communicating and distributing comments to the A/E. The PO holds and chairs design review meetings with OPDIV program

and technical staff to evaluate design review comments. The PO determines if the review comments are within the scope of the A/E's contract. If comments are not within the scope, the PO will reject the comments and does not forward them to the A/E.

- C. OPDIV Technical Review Staff - The OPDIVS are encouraged to select senior design discipline experts who have experience in preparing contract documents to assist the PO in reviewing and evaluating the A/E's work. The technical review staff should be very familiar with the A/E scope and contract, and should be allowed to interact with the A/E when it is appropriate. Comments should be recommendations and suggestions to ensure the success of the project. Comments that are directives should be avoided unless items within the design submittal are not in accordance with the scope of contract.
- D. OPDIV Program Staff - Care and deference must be given to OPDIV Program staff as the end-users, customers, and clients. However, they are not the A/E's customer or client. The A/E's client is the Contracting Officer (CO) or the COTR acting as the CO's designated representative. OPDIV program staffs are generally not familiar with the A/E contract and their comments may be programmatic without consideration of A/E - Government contractual obligations. Care must be taken to ensure the OPDIV program staff's comments are within contract scope. OPDIVs are encouraged to establish internal procedures to ensure that the PO is the communications conduit between the program staff and the A/E.

Section 4-4: PROJECT COST MONITORING & COST CONTROL

4-4-00	Policy
10	Procedures
20	Guidance and Information
30	Reporting Requirements

4-4-00 POLICY

The purpose of this section is to provide guidance to the OPDIVS for monitoring project cost on federally-owned real property assets. When construction funding is submitted to the Office of Management and Budget (OMB) as part of the Department's budget, the maximum project budget is considered to be fixed and linked to project scope. Reducing scope to maintain budget limits is considered similar to a cost overrun.

- A. Pre-Project Planning - The OPDIV shall ensure that the cost and scope of the project is locked into the budget and linked to the Pre-Project Planning and the Facilities Project Approval Agreement (FPAA). Pre-Project Planning must be completed prior to a construction budget submission to OMB and Congress. Once the construction budget is submitted to OMB and Congress, the OPDIV/HHS is committed to that budget and scope. Adequate Pre-Project-Planning must be done for assurance that the project can be delivered at full scope within the submitted budget.
- B. Programmatic Requirements - Once submitted to HHS and under A/E design, programmatic changes and other requirements (i.e. growth) must be held to an absolute minimum. The OPDIV must maintain control of its programmatic requirements.

4-4-10 PROCEDURES

The OPDIVs shall certify that the project is within scope, schedule and budget per the approved FPAA at each submittal. The A/E contract "Design within Funding" clause must be consistent with the approved FPAA. At a minimum the A/E should submit a broad order of magnitude estimate (square meter cost) at the schematic level, a systems estimate at design development level, and detailed quantity takeoff estimate at the contract document level.

If a subsequent submittal is found to be over the budget the Government will reject the submittal. The A/E shall resubmit the submittal and bring it within the budget in accordance with the "Design within Funding" clause of his/her contract. The exceeded budget portion of the construction cost shall not be a basis for the A/E to claim against the Government for additional fee.

4-4-20 GUIDANCE AND INFORMATION

- A. A/E - The A/E shall design the project within the budget and shall provide a construction cost estimate at each scheduled design submission. The A/E shall provide a narrative description of the methodology used in the development of the estimate. If estimating software is used to produce the estimate, provide summary details of the software.
- B. OPDIV Cost Consultant - The OPDIVS are encouraged to utilize a highly qualified cost engineer or estimator (in-house staff or through contract) to assist the Project Officer in monitoring A/E cost estimates for major capital projects. The Cost Consultant should be fair, impartial, objective, and effective in evaluating the cost reasonableness of the A/E's estimate.

- C. The Government Estimate - The final estimate will be considered the “Government Estimate” after it has been reviewed and accepted by the OPDIV Contracting Officer. The final estimate shall be detailed including material, labor, and significant equipment costs for each line item. The final estimate shall not exceed the construction budget.
- D. Cost Estimate Format - It is recommended that detailed cost estimates be broken down in accordance with the OPDIV’s construction-estimating format. The following indirect cost items shall be shown as separate line items in detailed estimates:
1. Sub-Contractor overhead and profit
 2. Prime Contractor markup on subs
 3. Prime Contractor overhead and profit
 4. Sales tax, State tax, Tribal fees (or tax), bonds and insurance
 5. Escalation cost per year

4-4-30 REPORTING REQUIREMENTS

With adequate level of Pre-Project-Planning prior to budget submission, scope changes and cost overruns should be rare occurrences. However, it is recognized that unexpected mission changes do occur that could not have been anticipated during the budget development, and that these mission changes can drive unexpected changes in the scope or budget of facility projects. OPDIVs are encouraged to avoid custom design and develop generic designs that are flexible and adaptable to deal with unexpected mission changes. In the event that an unexpected change in mission results in a change in scope or budget of the project, the OPDIV will immediately report these changes to OFMP and submit a revised FPAA per the requirements outlined in Section 2-3.

SECTION 4-5: DESIGN-BUILD

4-5-00	Policy
10	Procedures
20	Guidance and Information
30	Reporting Requirements
X4-5-A	General Design-Build Guidance and Considerations
X4-5-B	Sample Design-Build Qualifications Questionnaire
X4-5-C	Sample Phase Two Design-Build Proposal Selection Criteria

4-5-00 POLICY

This section establishes Design-Build (D-B) as the procurement methodology that receives first consideration for all design and construction projects of federally-owned real property assets throughout the Department of Health and Human Services.

Implementation of Design-Build as the preferred project delivery system will ensure that facilities development within the Department honors the Department's value of fiscal responsibility and prioritization of mission critical functions over administrative bureaucracy. The acquisition of design and construction services for federal facilities using Design-Build shall follow the policies and procedures in FAR 36.3. Design-Build is the preferred method for design and construction of facilities owned and operated by HHS.

The Office for Facilities Management and Policy, Assistant Secretary for Administration and Management (OFMP/ASAM) will review any exceptions to this policy as part of the project approval process. (See Section 2-3 HHS Facility Project Approval Agreements.) Exceptions will be granted for projects contracted under P.L.93-638, Indian Self-Determination and Education Act, with tribal entities.

4-5-10 PROCEDURES

ACQUISITION PLANNING.

During planning of project delivery and contract strategy for all projects, OPDIVs shall analyze the appropriateness of the Design-Build methodology. The OPDIV Contracting Officer, in close collaboration with appropriate design and construction professionals, determines during the budgeting and planning stage whether it is feasible and effective to use the Design-Build process. The OPDIVs should base their analyses on a best practice such as the Construction Industry Institute's Project Delivery and Contract Strategy. The OPDIVs shall include the acquisition analysis documentation with the Facility Project Approval Agreement provided to OFMP/ASAM. While D-B procurement can save time once the project is awarded, the D-B process requires more extensive "front-loading" of the project – that is, a more thorough and rigorous programming effort and a more thorough definition of requirements. In the planning stages of the project, the D-B process can be significantly more labor intensive for in-house personnel than the more traditional project delivery methods (e.g. design-bid-build process). Key elements in the success of a D-B project include:

- A. Development and continual update of a thorough acquisition plan.
- B. Developing comprehensive planning and programming documents based on preliminary studies and documents.
- C. Developing a request for proposal with a balance between performance specifications and specific technical requirements, where needed, for the type of facility being built. The level of technical detail

included in the request for proposal will depend upon the complexity of the project and specific OPDIV requirements for construction.

- D. Preparing accurate and necessary planning documents that will become integral to the request for proposal. The project team must secure OPDIV and high-level buy-in of the programming documents ahead of time, rather than making changes after award of the D-B contract.
- E. Preparing realistic budgets to reduce the likelihood of scope reductions once the RFP is advertised.
- F. Developing procedures and project controls to minimize owner-generated changes. Owner generated changes can be particularly problematic during a D-B project.
- G. Assignment of a multi-disciplined technical review board that can ensure during D-B selection evaluations that the proposers have met the requirements of the RFP with sound design and the D-B firm is qualified for the level of work. The Government has the best opportunity for success by securing a D-B contractor with a demonstrated track record and collaborative experience in the type of project being proposed.

Prior to advertising design-build services the OPDIV must ensure that adequate funds are available to complete the design of the project; that the Planning and Programming Documents and HHS Facility Project Approval Agreement documents and statement of work are complete; evaluation criteria is established and the government estimate is complete.

4-5-20 GUIDANCE AND INFORMATION

A. GUIDANCE ON DESIGN-BUILD CONTRACT FORMULATION & PROCUREMENT

FAR 36.3 prescribes only the acquisition method for two-phase Design-Build selection procedures and there is no guidance on the required clauses or contract administration. Design-Build does not waive Federal law or regulations. For example, the 6 percent fee limitation for basic design services applies and the Miller Act requiring bonding applies. Refer to the FAR Matrix for the appropriate provisions and clause under both A/E and construction contracts. It is recommended that the provisions and clauses be written in full text.

Design-Build can be accomplished through various procurement methods. This is not intended to be an all-inclusive list, nor does HHS endorse a preference, but provides the following information on the most common methods.

1. “Best Value” is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative can be further subdivided as to technical design and/or management plan. A qualification based selection process can be used in Phase One to determine the competitive range. Those firms who are the most qualified are invited to submit a proposal in response to the Phase Two RFP.
2. “Equivalent Design/Low Bid” is a form of best value selection in which qualitative proposals are followed by a critique rather than scoring. Price envelopes remained sealed. Each offeror receives the critique of its proposal and makes design changes and corresponding price amendment. Revised designs are evaluated for compliance, and then price envelopes, both original and amended, are opened. Award is based on lowest price because the proposal creates relative equivalency of designs.
3. “Fixed Price/Best Design” is a form best value selection in which the contract price is established by the Government and stated in the RFP. Design proposals and management plans are evaluated and scored, with award going to the team offering the best qualitative proposal for the established price.

Exhibit X4-5-A provides additional guidance to the OPDIVS in developing a Two-Phase Design-Build Selection.

B. REQUIREMENT TO USE DESIGN FIRMS LISTED IN DESIGN-BUILDER'S PROPOSAL

One of the significant qualitative considerations when evaluating a Design-Builder's proposal (in response to the government's RFP) is the quality of proposed design professionals on the team. The RFP should specify that the Design-Builder must retain all of the design professional firms listed in its proposal, for the entire period of the contract, for the duties and responsibilities assigned in the same document, unless specifically authorized otherwise by the Government. See exhibit X4-5-B for a Sample Design-Build Qualifications Questionnaire and X4-5-C for Sample Selection Criteria.

C. DESIGN BUILD CONTRACT ORDER OF PRECEDENCE AND CLAUSES

Do not use the standard clause "Order of Precedence-Uniform Contract Format" (FAR 52.215-8). This standard clause puts the order of precedence of the proposal above the scope of work when there are inconsistencies or conflicts between the two. In design-build construction, the RFP is the minimum standard except when the offeror's best value proposal exceeds the minimum RFP requirements, known as betterment. In this case, the betterment becomes the new minimum standard. The recommended language for this clause is:

Design-Build Contract – Order of Precedence

- (a) *The contract includes the standard contract clauses and schedules current at the time of the award. It also entails: (1) the solicitation in its entirety, including all drawings, cuts and illustrations, and any amendments during proposal evaluation and selection, and (2) the successful Offeror's accepted proposal. The contract constitutes and defines the entire agreement between the Contractor and the Government. No documentation shall be omitted which in any way bears upon the terms of that agreement.*
- (b) *In the event of conflict or inconsistency between any of the provisions of the various portions of this contract, precedence shall be given in the following order:*
 - (1) *Betterments: Any portions of the Offeror's proposal, which both meet and exceed the provisions of the solicitation.*
 - (2) *The provisions of the solicitations.*
 - (3) *All other provisions of the accepted proposal.*
 - (4) *Any design products, including but not limited to plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, etc. These are deliverables under the contract and are not part of the contract itself. Design products must conform to all provisions of the contract, in order of precedence herein.*

(End of Clause)

4-5-30 REPORTING REQUIREMENTS

BID REPORT FOR CONSTRUCTION CONTRACTS

The OPDIV shall submit a bid report to the Office for Facilities Management and Policy (OFMP) at the completion of the selection and evaluation process. A bid report is required only on those projects requiring HQ approval per the FPAA policy. The report is for OFMP information only. The Bid Report may be a copy of the selection report or summary of the significant technical and cost information contained therein. A format similar to the sample bid report form provided in Section 4-6, as Exhibit X4-6-D is acceptable.

GENERAL DESIGN-BUILD GUIDANCE AND CONSIDERATIONS

The Contracting Officer will determine if two-phase design-build selection procedures are appropriate to use in accordance with FAR 36.301

A. PHASE ONE SELECTION PROCEDURES

Proposals or qualifications will be evaluated in Phase One to determine which offerors will be invited to submit proposals for Phase Two. The Phase One request for qualifications RFQ is a formal request for the necessary and desirable qualifications from potential Design-Build contractors wishing to be considered for the competitive proposal preparation phase of the selection process (See Facilities Program Manual Exhibit X4-5-B, Sample Design-Build Qualifications Questionnaire.). The Design-Builders who intend to submit qualification statements in response to the Government's RFQ shall be informed in advance of the requirements of request for proposal (RFP). Alternatively, the Government may publish both the RFQ and the RFP as a single, comprehensive document. Phase One evaluation factors shall be in accordance with FAR 36.301-1(a)(2). In addition the following evaluation factors are recommended:

1. Minimum level of bonding capacity and proof thereof,
2. Minimum insurance requirements,
3. Required license, registration and/or tax status of Design-Builder and team members, and
4. Financial strength and organizational resources.

After evaluating phase-one proposals, the Evaluation Board shall recommend to the Contracting Officer the most highly qualified offerors (not to exceed the maximum number specified in the solicitation). Only those offerors will be invited to submit phase-two proposals. Due to the cost involved in preparing a design-build proposal, the Evaluation Board should be certain that any firm on the short-list is considered competitive for selection in that they would be capable of completing the project successfully.

B. PHASE TWO REQUESTS FOR PROPOSAL EVALUATION PROCEDURES

Phase Two of the solicitation shall require submission of technical and price proposals, which shall be evaluated separately, in accordance with FAR Part 15. Beyond the mandatory requirements of the program and performance specifications, the proposal selection criteria are arguably the most critically examined section in the RFP. The selection criteria should be derived from and support the Government's stated objectives for the project. The criteria are the basis for determining which contractor proposals are responsive. Therefore, it is very important for the Government to do a good job of defining the essential criteria and to communicate it clearly in the RFP. (See Facilities Program Manual Exhibit X4-5-C, Sample Phase Two Design-Build Proposal Selection Criteria.) The clarity with which the government understands and communicates the project requirements will be significant in the quality of proposals received and ultimately in the quality of the product delivered.

1. Communications: It is in the Government's best interest to maintain a high level of competition between the offerors. To accomplish this, the offerors must know that they have an equal opportunity to prepare a winning Design-Build proposal. Critical to maintaining equal opportunity for all offerors is the establishment of an unbiased method of communication between the offerors and the Government. Techniques and procedures that improve Government/Offeror communication and create an atmosphere of impartiality should be implemented.
2. Design-Build Planning and Technical Requirements: Development of a comprehensive program of facility requirements and performance specifications that anticipates and answers the offerors questions is imperative. In-person briefings for Design-Build teams can be held. The Govern-

ment's technical and contracting staff and others that are familiar with the project should be utilized for this purpose. The Government must document and distribute the outcomes of these meetings. The Contracting Officer should allow only written questions outside the Q&A sessions, and provide written answers to all offerors simultaneously. If necessary, the Contracting Officer may issue addenda to the RFP as a result of the questions throughout the process. Contact between the proposers and the Government should carefully follow the process outlined in the RFP. The Contracting Officer should set a cutoff date for questions and a deadline for last addenda to the RFP, typically no less than two weeks prior to the submission deadline.

3. Discussions with Offerors: Members of the Source Selection Board may, with approval of the Contracting Officer, submit written questions to each offeror, which are requests for clarification of that offeror's proposal. The offeror provides a written response to those questions.
4. Presentations: For Design-Build competitions in which design criteria are the predominant factor in selection, the offeror may be given an opportunity to present and defend their proposal before the Evaluation Board. The following procedures are recommended:
 - a. The Contracting Officer determines the order of presentation. The Government should determine the dates, duration, and venue well in advance.
 - b. Only members and employees of the offeror's team may participate in the presentation (no professional presenters).
 - c. Members of competing offeror's teams are excluded from the audience. The Government will determine in advance what presentation materials, if any may be used in the presentations. The offeror should not modify or add to their proposal during their in-person presentations. This restriction includes technical information not contained in their initial submittal, unless it is in response to a question from the Evaluation Board.
5. Other Information at the Option of the Offeror: It may be appropriate to allow the offerors to submit additional technical drawings, specifications, calculations and special reports. This additional procurement sensitive information typically has to be prepared by the Design-Build team in order to arrive at a price proposal. This additional information can serve to protect the interests of both parties in the Design-Build contract by more precisely describing what is offered in the response to the RFP. This additional procurement sensitive information should be provided only to the Evaluation Board, and kept separate from the specified design display materials.
6. Unsolicited Alternates: The Design-Build selection process is based strictly on the offeror's response to the RFP and its requirements. Therefore, the Evaluation Board should not consider unsolicited alternates.
7. Disqualification: If significant and intentional breaches of the RFP procedures occur, the Contracting Officer will investigate and make corrective actions, including offeror disqualification, if warranted. If unintentional or unlisted discrepancies appear in the proposal, the Contracting Officer will require the offeror to certify that the proposal will meet every requirement of the RFP, or disqualify the proposal. The basis of disqualification at each phase of the selection process should be described in the RFP.

C. DESIGN-BUILD MANAGEMENT PROCEDURES

1. Contract Award - After the proposals have been evaluated, an award will be made with reasonable promptness to the Offeror whose proposal is the "Best Value" and most advantageous to the Government, considering price and the price-related factors included in the RFP, as well as the other evaluation factors which may include past performance, safety history, available resources, schedule, etc.

2. Design-Build Contract Administration - Each OPDIV shall decide the appropriate key staff for any project team depending on complexity, cost, type of construction, etc. Key team members that may be involved in construction projects are: Contracting Officer, Project Officer (COTR), Commissioning Agent (if required see Section 3-11) and the Design-Build Contractor.
 - a. Monitoring Schedule, Scope, and Cost: In addition to visual inspections of the work and materials, it would be good practice for project officers to measure performance of design-build projects using management tools that evaluate progress with respect to schedule, scope and cost. By integrating the resultant data, useful information is derived which can be used to determine the percentage of work complete for payment purposes or to identify schedule problems that require corrective action on the part of the contractor.
 - b. Submittals: The need for submittals shall be determined by the OPDIVs, as required by the contract. Typically, submittals take one or more of the following forms: architectural and engineering plans, technical specifications, shop drawings, diagrams, catalog submittals, color charts, samples, mock-ups, safety plans, testing plans, test results, disposal plans, production plant visits, as-built drawings, and other associated information. Substitutions may be allowed only at the discretion of the Contracting Officer. The OPDIVs shall define the scope, process, elements, and documentation of the submittal approval activity.
 - c. Contractor Payments: Contractor progress, or partial, payments are usually made periodically (monthly) during the progress of the Project. The amount of payment is usually based upon the contract amount, an approved schedule of values, an approved progress schedule, project officer verification of the value of work-in-place and stored materials, satisfactory progress on the approved progress schedule, and project officer recommendation to the Contracting Officer for payment. From time to time, payments may be reduced for cause, as outlined in the FAR. Approval authority for progress payments rests with the Contracting Officer.
 - d. Final Payment: Contractor final payment is made at the end of the Project when all provisions and requirements of the contract have been satisfactorily accomplished by the contractor. The project officer addresses construction issues and reports any deficiencies to the Contracting Officer. Approval authority of final payment rests with the Contracting Officer.
3. Acceptance: The Contracting Officer has sole authority to grant final acceptance of any facility or portion thereof. Generally, acceptance infers approval of all work, including satisfactory correction of all the items on the deficiencies and omissions list. Acceptance of the contract work is final and conclusive, subject to certain contractual conditions such as warranties, guarantees, latent defects, etc. For this reason, a facility should not be accepted without a clear delineation in writing of any conditions or exceptions to the acceptance. Acceptance should not be granted unless all close-out items have been completed, such as O&M Manuals, as-built drawings, list of systems and equipment, attic stock, tools, maintenance parts, etc., and that all specified operator/maintenance personnel training has been provided.
 - a. Warranties: The OPDIVs responsible for the Project shall appoint appropriate staff to assist the Contracting Officer in the management of the technical portion of the warranty process for the completed Project. The OPDIVs shall determine the period of time that the project officer remains involved with warranty management, before transferring the responsibility to the organization providing operations and maintenance functions for the facility.

- b. Closeout Documents: All documents required by the contract including, but not limited to, Guarantees and Warranties, Commissioning Reports, Record Drawings, Operation and Maintenance Manuals, and Training Documents, shall be provided as specified prior to contract closeout. Each OPDIV shall prepare a format to assure that all contracts are closed out and all funds are disbursed or de-obligated from the project.
- c. Training: Training of Operations and Maintenance Staff to operate and maintain the new facility and sophisticated building systems and equipment is important to the activation of the facility. Provisions for adequate operation and maintenance training should be provided for in the specifications or in the general provision of the contract. The contract should require the contractor to provide a detailed training plan based on actual submitted manufacturer's recommendations for review and approval by the COTR. Provisions for training the operators/ users in the care and use of equipment should also be included in the contract. Training should occur prior to acceptance of the work by the Government.

D. RECOMMENDED CLAUSES

1. Proposed Betterments: This clause notes that all betterments offered in the proposal become a requirement of the awarded contract. Betterment is defined as any component, system, or any other material aspect of the proposal that exceeds the minimum requirements stated in the Request for Proposal. This includes all proposed betterments listed by the offeror in its proposal and all Government-identified betterments. The Government-identified betterments are provided in a list of accepted project betterments by the Evaluation Board and are made a part of the contract.
2. Key Personnel: Subcontractors, and Outside Associates of Consultants – Contract Clause 52.244-4 is modified by adding the term “Key Personnel” to the title. This prevents the contractor from switching key personnel and subcontractors after award. This can only be done with written permission from the Government’s Contracting Officer.
3. Responsibility of the Contractor for Design: This is modified from FAR Clause 52.236-0023 to fit the design-build process. Instead of using the term Architect-Engineer Contractor, the clause references “Contractor.” The clause also requires the contractor to correct construction errors resulting from faulty design.
4. Warranty of Construction Work: The Contracting Officer may want to delete references in the typical Warranty of Construction clause by deleting references to “design furnished.” This wording limits the warranty for design services to one year.
5. Sequence of Design/Construction: Include an appropriate clause that either allows or disallows fast track construction prior to design completion.
6. Constructor’s Role during Design: This clause is especially crucial in D-B contracts. It emphasizes that the contractor’s construction management key personnel must be actively involved during the design process to effectively integrate the design and construction requirements of the contract.
7. Government Oversight during Design and Construction: Government oversight of the design-build process is required for the success of the project. Treating the process as a turnkey operation may lead to the owner receiving a product unlike what they expect or require. The Government representatives must refrain from taking on any approval responsibility that is within the contractor’s jurisdiction including shop drawings, submittals, etc. However, the facility users and the technical and contractual representatives should stay abreast of these items and provide recommendations and review comments when warranted. The Government’s main function during

the design and construction is to ensure the D-B contractor meets the requirements of the request for proposal and the contractor's proposal, both of which are part of the formal contract.

8. Project Coordination: Includes provisions to submit design and construction documents for approval by the Government at various stages, and defines the stages and the level of documentation required. When accepted and approved by the Government for progress, design development and construction documents (plans and specifications) produced by the Design-Builder after award become part of the contract documents. However, the Government's concurrence with these documents does not relieve the Design-Builder of the obligation to meet the requirements of the RFP and its proposal, unless specifically indicated otherwise by the Government on an item-by-item basis.
9. Inspections and Interpretations: The Design-Builder's architect/engineer should inspect the work periodically and reject work that does not comply with the construction documents prepared by and/or approved by the A/E. The Design-Builder's architect/engineer should make interpretations of its construction documents when requested to do so by the Government, which interpretations should be reasonably inferred from those documents. The Design-Builder's architect/engineer should be reasonably available to the Government for such interpretations and other information related to the design and construction documents.
10. Review of Shop Drawings and Submittals: The Design-Builder's architect/engineer should review and approve all shop drawings, submittals, samples, etc. for compliance with the construction documents and the intent of the RFP, prior to their submission to the Government. (The Government does not approve, but acknowledges progress represented by the submissions.)

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Sample Design-Build Qualifications Questionnaire

Design - Build Services Request for Qualifications	1. Project Name and Location	2a FedBizOpps Announcement Date,	2b. Agency Identifica- tion Number	2c. Date Prepared
3. Firm (or Joint Venture) Name & Address		3a. Name, title & Telephone Number of Principal to Contact		
4a. Year Present Firm(s) Established Firm: Firm: Firm:	4b (Firm 1) Specify Type of Owner- ship and check below if applicable <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadvantaged Business <input type="checkbox"/> Woman Owned Business	4c (Firm 2) Specify Type of Ownership and check below if applicable <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadvantaged Busi- ness <input type="checkbox"/> Woman Owned Business	4d (Firm 3) Specify Type of Ownership and check below if applicable <input type="checkbox"/> Small Business <input type="checkbox"/> Small Disadvantaged Business <input type="checkbox"/> Woman Owned Business	
5. Team Member Personnel by De- sign/Construction Profession:				
___ Administrative ___ Architects ___ Civil Engineers ___ Construction Managers ___ Draftspersons/CADD Operators ___ Electrical Engineers	___ Estimators ___ Field Supervisors ___ Geotechnical Engineers ___ Interior Designers ___ Landscape Architects ___ Mechanical Engineers ___ Planners Urban/Regional ___ Project Managers	___ Quality Control Managers ___ Safety Officers ___ Sanitary Engineers ___ Schedulers ___ Specification Writers ___ Structural Engineers ___ Surveyors	Other: ___ ___ ___ ___ Total Personnel	
6. If submitted by Joint-Venture list participating firms and outline specific areas of responsibility(including administrative, technical and financial) for each firm:				

9. Proposed Subcontracts for Special Professional Design Services			
Type of Service _____ Name of Firm _____ Address _____ _____	Type of Service _____ Name of Firm _____ Address _____ _____	Type of Service _____ Name of Firm _____ Address _____ _____	Type of Service _____ Name of Firm _____ Address _____ _____
Type of Service _____ Name of Firm _____ Address _____ _____	Type of Service _____ Name of Firm _____ Address _____ _____	Type of Service _____ Name of Firm _____ Address _____ _____	Type of Service _____ Name of Firm _____ Address _____ _____
10. Proposed Major Subcontractor Team Members for Construction			
Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____	Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____
Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____	Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____
Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____	Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____
Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____	Type of Work _____ Name of Firm _____ Address _____ _____	Related Project Examples: _____ _____ _____

11. Insert\Attach Organizational Chart

12. Brief Resume of Key Personnel, Specialist, and Individual Consultant for this Project	
a. Name & Title	
b. Project Assignment	
c. Name of Firm with which Associated	
d. Years Experience	
e. Education/Training	
f. Registration/License	
g. Experience and Qualifications Relevant to the Proposed Project	

13. Work by Firm or Joint Venture Members which best illustrate current qualifications relevant to this project. (List no more than 10 projects)

a. Project Name and Location	b. Nature of Firms Responsibility	c. Completion Date	d. Estimated Cost (in thousands)	e. Project Owners Name & Address and Contacts Name & Phone Number
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Project Description and Magnitude

14. All work by firm or joint-venture members currently being performed directly for federal agencies					
a. Project name and Location	b. Nature of Firm's Responsibility	c. Agency Name & Address	d. Percent Complete	e. Estimated cost (In Thousands)	
				Entire Project	Work for which firm is responsible

15. Narrative Response to Specialized Experience and Technical Competence

16. Narrative Response to: Capability to accomplish the work in the time required.

17. Narrative Response to: Location in the general geographical area of the project and knowledge of the locality of the project.

18. Narrative Response to: Quality of technical and managerial organization proposed.

19. Narrative Response to: Design approach or philosophy.

20. Narrative Response to: Construction management plan, including time, cost and quality control.

21. Narrative Response to: Financial strength and stability of the offeror.

a. Name & Address of Bonding Company

b. Bonding Limit

c. Current Bonding Capacity

22. Narrative Response to: Past performance of the offeror's team (including the architect-engineer and construction members) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules

23. Narrative Response to: Minority Participation.

24. Narrative Response to: Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One.

25. The Forgoing is a Statement of Facts:

Date: _____

Signature: _____

Typed Name and Title: _____

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SAMPLE PHASE TWO DESIGN-BUILD PROPOSAL SELECTION CRITERIA

A. Building Project

1. Architectural Image & Character
2. Functional Efficiency & Flexibility
3. Quality of Materials and Systems
4. Quantity of Usable Area
5. Access
6. Safety & Security
7. Energy Conservation
8. Operation & Maintenance Cost
9. Cost/Value Comparison
10. Completion Schedule

- B. Alternate for Engineering Project: Technical Innovation and Environmental Acceptability of Engineered Solution. Criteria 2, 3, 5, 6, 7, 8, 9, and 10 above apply.

SECTION 4-6: DESIGN-BID-BUILD

4-6-00	Policy
10	Procedures
20	Guidance and Information
30	Reporting Requirements
X4-6-A	Checklist to Award Architect/Engineer Design Contract
X4-6-B	Sample Statement of Work
X4-6-C	Sample Selection Evaluation Form
X4-6-D	Sample Bid Report Form

4-6-00 POLICY

This section sets forth policies, procedures and guidance for Design-Bid-Build of federally-owned real property assets, the traditional method that utilizes two or more separate and discrete contracts to deliver a facility. Usually there is one design (architect-engineer contract) and one or more construction contracts. Under this arrangement there is no privity between the contracts. The designer who develops the plans and specification (contract documents) cannot direct or supervise construction.

The procurement of architectural-engineering (A/E) services is qualifications based, in accordance with FAR 36.6 and the requirements of the Brooks Act (40 U.S.C.1101-1104). The Brooks Act “declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices”. Construction can be procured using sealed bids in accordance with FAR 36.1 and FAR 36.2. Construction can also be procured under FAR 36.214 Special Procedures for Price Negotiation in Construction contracting.

4-6-10 PROCEDURES

The following information is provided to assist with the planning and implementation of Design-Bid-Build projects. Exhibit X4-6-A provides a checklist for the sequence of events leading up to award of an Architect/Engineer design contract.

A. REQUEST TO UTILIZE DESIGN COMPETITIONS

The OPDIVS shall obtain permission to utilize design competitions from the Assistant Secretary for Administration and Management through the Office for Facility Management and Policy.

B. PRE-DESIGN PROCEDURES

Prior to advertising design services the OPDIV must ensure that adequate funds are available to complete the design of the project; that the Planning and Programming documents and HHS Facility Project Approval Agreement and statement of work are complete; evaluation criteria is established and the government estimate is complete.

1. Availability and Certification of Design Funds: Designs for new facilities, replacement facilities, and building additions must be accomplished with funds appropriated for the specified project. Designs for building improvement projects must normally be accomplished with specifically designated funds or with lump sum amounts appropriated for repairs and improvements. Guidance

should be requested from the OFMP, in the event of questions on the appropriateness of proposed design funding sources.

In unusual cases where time is critical, and the appropriation/apportionment appears to be imminent, it may be appropriate to advertise for design services before the funds are actually received. In such cases, the Contracting Officer should obtain a written statement from the agency's financial management officer to the effect that appropriation and apportionment of proper funds is expected within 60 days. Wording should also be included in the announcement to the effect that the Department expects to receive design funds in the near future, and that the award of the A/E contract is subject to the receipt of these funds.

2. Planning and Programming Documents and HHS Facility Project Approval Agreement: The planning and programming documents and HHS Facility Project Approval Agreement (FPAA) define a large portion of the scope of work, and are essential to the A/E selection process. Therefore, planning and programming documents clearly defining the project scope and requirements should be approved prior to advertising the procurement. An HHS Facility Project Approval Agreement must be approved by the Department prior to awarding a design contract.
3. Preparation of the A/E Statement of Work: The A/E Statement of Work is the key document in the actual performance of the work. A well-prepared statement of work minimizes negotiation problems, eliminates ambiguities, and assures that the design will satisfy program needs. The planning and programming documents should be incorporated into the Statement of Work or attached to the Statement of Work to describe the project requirements and concept. The Statement of Work should be tailored to the specific design requirements of each project. Typical areas covered by the Scope of Work are pre-design services, basic design service and optional construction contract administration services. See Exhibit X4-6-B for a Sample Statement of Work.
4. Evaluation Criteria: In qualification-based selections, the Evaluation Board establishes criteria to be used in evaluating the A/E firms before making the public announcement. The criteria for qualification-based selections shall conform to the Federal evaluation criteria set forth in FAR 36.6.

In design competitions the selection of the A/E is based on a comparison of proposed solutions to planning and programming documents or the design problem.

The evaluation criteria will be listed in the announcement, in descending order of importance.

5. Government Prepared Estimate of A/E Costs: The rules governing preparation of the independent government estimate of the cost for required A/E services are set forth in FAR 36. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal. The estimate must be prepared prior to publishing the Fed-BizOpps announcement. The independent government estimate serves two main purposes:
 - a. It determines the sufficiency of funds to cover the project as outlined in the statement of work. If the estimate indicates that the allocated funds are not sufficient to cover the proposed project, the procuring agency may modify the statement of work or pursue an authorized increase in funding.
 - b. It serves as a guideline to measure the reasonableness of the A/E firm's fee proposal. Major differences between the government estimate and the A/E cost proposal, or the scope of services to be furnished, should be investigated thoroughly. Major differences may indicate that the statement of work is not clearly defined or communicated. Any changes that are made in the government estimate or statement of work must be agreed upon by both the Contracting Officer (CO) and the technical staff and recorded in the CO's file.

The fee estimate for design shall not exceed six percent (6%) of the estimated cost of construction, as required by law. Other required services, not related to design, must be included in the estimate but are not included in the 6% calculation. The maximum fee limitation does not apply to the following A/E services: preparing planning and programming documents; feasibility studies; measured drawings of existing facility; subsurface investigations; structural, electrical, and mechanical investigation of existing facility; topographic/ boundary/ utilities surveys; special consultant services; the cost of reproducing drawings and specifications for bidding and for distribution to prospective bidders and plan file rooms; reproduction of approved designs through models, color renderings, photographs, or other presentation media; travel and per diem allowances; supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase; and all other services that are not integrally a part of the A/Es design services.

C. EVALUATION BOARDS

The OPDIVS shall establish appropriate evaluation boards or juries to evaluate A/E qualifications to design HHS facilities.

1. The Evaluation Board for architect-engineer services shall be established according to FAR 36.602-2. It is recommended that the board include registered professionals representing relevant architectural and engineering disciplines. The board could also include members representing the program users to be housed in the facility, operations and maintenance, agency planning and other specialized support functions. The agency official responsible for facilities will establish an Ad Hoc Evaluation Board for each architect-engineer contract.
2. Duties of the Chairperson - The Chairperson of the A/E Evaluation Board for all contracts will assist the OPDIV Facility Manager or designee in appointing the members of the board. In addition, the Chairperson will call and preside over as many meetings as he/she deems necessary to complete the selection process. The Chairperson will also recommend the assistance of other technical personnel (non-voting technical advisors) who may make a substantial contribution to the evaluation process. The Chairperson will also develop the final selection report for approval and inclusion in the contract file.
3. Competition Advisor - In the rare event that a design competition is contemplated the OPDIV shall appoint a Competition Advisor. The Competition Advisor serves as the sponsoring OPDIV's focal point for the design competition. The Competition Advisor should be a registered architect who holds a senior position within OPDIV or HHS. The Competition Advisor may be hired from the outside if HHS does not have qualified personnel available for the assignment. The Competition Advisor will: prepare the Competition Announcement; assist in the preparation of the Program of Requirements; establish eligibility requirements and register the competitors; assist in the recruitment of design jurors; establish competition security protocols; and establish the presentation format for the competition.
4. Design Competition Jury - The jury should be composed of nationally recognized registered architects and engineers including senior HHS design professionals. The jurors or members of their staff are not allowed to compete for the project. (See 4-6-20B when used.)

D. DESIGN-BID-BUILD PROCEDURES

1. Public Announcements - The Government shall make a public announcement of any planned A/E selection. See paragraphs 4-6-20A and 4-6-20B for additional information.

2. Evaluation Procedures - A/E firms shall be evaluated and rated to establish the competitive range. Each evaluation board member shall review the information submitted by each A/E firm and rate the firms individually. When the members have finalized their rankings of the firms, they shall be tabulated and summarized. See Exhibit X4-6-C for a Sample Selection Evaluation Form. From this summary, the firms within the competitive range are selected for interviews. At least three of the top firms thus selected shall be notified and scheduled for discussions (interviews).
3. Interviews - The evaluation board shall clearly communicate to each firm the evaluation criteria, time allowed and key A/E personnel that should attend the interview. Firms should be allowed sufficient time to prepare for interviews. The topics must stay within the parameters established in the announced evaluation criteria in the public announcement. At the end of the interviews, the board members shall rank the interviewed firms again, using the previously established ranking criteria. With the approval of the OPDIV Facility Director, telephone interviews may be conducted with A/E Firms for small projects in accordance with the Short Selection process described in the FAR.
4. Selection Report - The selection report shall be prepared by the Chairperson of the board, and signed by the Chairperson and each member of the board. It shall include a list of the most highly qualified firms (not less than three) ranked in terms of relative qualifications. This report shall document the extent of the evaluation and the considerations upon which the recommendations were based. The report shall be submitted to the Selecting Official.
5. Negotiations - Negotiations shall be conducted with the top-ranked A/E firm. If a mutually satisfactory contract cannot be negotiated with that firm, the CO shall obtain a best and final offer, in writing, from the prospective A/E firm, terminate the negotiations, and so advise the firm. Negotiations shall then be initiated with the next listed firm in the order of preference, and this procedure shall continue until a mutually satisfactory contract has been negotiated. If negotiations fail with all the listed firms, the selection process shall reconvene. Promptly at the conclusion of any negotiations, a memorandum setting forth the principal elements of the negotiations shall be prepared for use by the reviewing authorities and for inclusion in the contract file.
6. Design Contract Award - After the selection of the A/E firm and conclusion of negotiations, the CO shall award the contract. The contract and the statement of work shall reflect any changes that were agreed upon during negotiations. The contract shall set forth the scope, the period of performance (i.e., the start and completion dates), a schedule of submissions, and method of payment. The contract shall reflect the A/E firm's assurance that it will provide a design that can be constructed within the Government's construction/renovation cost estimate.
7. Design Contract Administration - Each OPDIV shall decide the appropriate key staff for any project team depending on complexity, cost, type of construction, etc. Key team members that may be involved in design projects are: Contracting Officer, Project Officer (COTR), Architect/Engineer, and Commissioning Agent (if required see Section 3-10).
 - a. Monitoring Schedule, Scope, and Cost: In addition to review of the work it is standard practice for project officers to measure performance of design projects using management tools that evaluate progress with respect to schedule, scope and cost. By integrating the resultant data, useful information is derived which can be used to determine the percentage of work complete for payment purposes or to identify schedule problems, which require corrective action on the part of the contractor.

- b. Submittals: The need for submittals shall be determined by the OPDIVs. (See Section 4- 3) The OPDIVs shall define the scope, process, elements, and documentation of the submittal approval activity.
 - c. Contractor Payments: Contractor progress or partial payments are usually made periodically (monthly) during the progress of the Project or at specific submittal authorized in the contract. The amount of payment is usually based upon the contract amount or an approved progress schedule, and project officer recommendation to the Contracting Officer for payment. From time to time, payments may be reduced for cause, as outlined in the FAR. Approval authority for progress payments rests with the Contracting Officer.
 - d. Final Payment: Contractor final payment is made at the end of the Project when the contractor has satisfactorily accomplished all provisions and requirements of the contract. The project officer addresses design issues and reports any deficiencies to the Contracting Officer. Approval authority of final payment rests with the Contracting Officer.
8. Pre-Acquisition Review (PAR) for Construction Contracts - The Contracting Officer will take charge of and manage the project acquisition and the construction contracting process. The architect/engineer is responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts including adequacy of the plans and specifications. The OPDIVs are encouraged to establish a pre-acquisition review process to assure that everyone involved in the development and assembly of the construction acquisition package confirms that the package is complete and satisfactory. Under the direction of the Contracting Officer, the PAR team should consist of the Contracting Officer, Contracting Officer's technical representative, architect/engineer, OPDIV's technical review team, and the Office of General Counsel. It is recommended that the PAR team review the construction contract to assure that all applicable provisions and clauses are included. The PAR team should confirm that the construction acquisition package is in accordance with the Facility Project Approval Agreement (FPAA).
9. Pre-Bid Conference - OPDIVs are encouraged to hold on-site pre-bid conferences for all construction projects. The agenda will vary depending on the scope and complexity of the project. For major projects, it is recommended that OPDIVs use the services of a professional recorder to record the proceedings and send each participant a hard copy of the meeting record.
10. Submission of Bids or Proposals – Consistent with FAR Part 14 or 15, as appropriate, bids or proposals must be submitted in accordance with the terms and conditions of the solicitation, which shall specify a due date, time and location for submission.
11. Evaluation of Bids or Proposals - If sealed bidding procedures are used, the contracting officer will follow evaluation requirements of FAR Part 14. If a negotiated acquisition, then the contracting officer will follow the evaluation requirements of FAR Part 15, including the provision at FAR 52.215-1, which allows for award without discussion.
12. Contract Award - Contract award will be made with reasonable promptness upon completion of the evaluation of the offers pursuant to the relevant FAR provisions and terms of the solicitation.
13. Construction Contract Administration - Each OPDIV shall decide the appropriate key staff for any project team depending on complexity, cost, type of construction, etc. Key team members that may be involved in construction projects are: Contracting Officer, Project Officer (COTR), Architect/Engineer, Commissioning Agent (if required) and the Construction Contractor.
 - a. Monitoring Schedule, Scope, and Cost: In addition to visual inspections of the work and materials, it is standard practice for project officers to measure performance of construction projects using management tools that evaluate progress with respect to schedule, scope and cost. By integrating the resultant data, useful information is derived which can be used to deter-

- mine the percentage of work complete for payment purposes or to identify schedule problems that require corrective action on the part of the contractor. In so doing, the project officer is applying the most basic Earned Value principles.
- b. Submittals: The need for submittals shall be determined by the OPDIVs, as required by the appropriate acquisition regulation, the contract, and the pre-construction conference agenda. Typically, submittals take one or more of the following forms: shop drawings, plans, diagrams, catalog submittals, color charts, samples, mock-ups, safety plans, testing plans, test results, disposal plans, coordination drawings, production plant visits, as-built drawings, and other associated information. Substitutions may be allowed only at the discretion of the Contracting Officer. The OPDIVs shall define the scope, process, elements, and documentation of the submittal approval activity.
 - c. Contractor Payments: Contractor progress or partial payments are usually made periodically (monthly) during the progress of the Project. The amount of payment is usually based upon the contract amount, an approved schedule of values, an approved progress schedule, project officer verification of the value of work-in-place and stored materials, satisfactory progress on the approved progress schedule, and project officer recommendation to the Contracting Officer for payment. From time to time, payments may be reduced for cause, as outlined in the FAR. Approval authority for progress payments rests with the Contracting Officer.
 - d. Final Payment - Contractor final payment is made at the end of the Project when all provisions and requirements of the contract have been satisfactorily accomplished by the contractor. The project officer addresses construction issues and reports any deficiencies to the Contracting Officer. Approval authority of final payment rests with the Contracting Officer.
14. Acceptance: The Contracting Officer has sole authority to grant final acceptance of any facility or portion thereof. Generally, acceptance infers approval of all work, including satisfactory correction of all the items on the deficiencies and omissions list. Acceptance of the contract work is final and conclusive, subject to certain contractual conditions such as warranties, guarantees, latent defects, etc. For this reason, a facility should not be accepted without a clear delineation in writing of any conditions or exceptions to the acceptance. Acceptance should not be granted unless all close-out items have been completed, such as O&M Manuals, as-built drawings, list of systems and equipment, attic stock, tools, maintenance parts, etc., and that all specified operator/maintenance personnel training has been provided.
- a. Warranties: The OPDIVs responsible for the Project shall appoint appropriate staff to assist the Contracting Officer in the management of the technical portion of the warranty process for the completed Project. The OPDIVs shall determine the period of time that the project officer remains involved with warranty management, before transferring the responsibility to the organization providing operations and maintenance functions for the facility.
 - b. Closeout Documents: All documents required by the contract including, but not limited to, Guarantees and Warranties, Commissioning Reports, Record Drawings, Operation and Maintenance Manuals, and Training Documents, shall be provided as specified prior to contract closeout. Each OPDIV shall prepare a format to assure that all contracts are closed out and all funds are disbursed or de-obligated from the project.
 - c. Training: Training of Operations and Maintenance Staff to operate and maintain the new facility and sophisticated building systems and equipment is very important to the activation of the facility. Provisions for adequate operation and maintenance training should be provided for in the specifications or in the general provision of the contract. The contract should require the contractor to provide a detailed training plan based on actual submitted manufacturer's recommendations for review and approval by the COTR. Provisions for training the

operators/ users in the care and use of equipment should also be included in the contract. Training should occur prior to acceptance of the work by the Government.

4-6-20 GUIDANCE AND INFORMATION

A. QUALIFICATION BASED SELECTIONS FOR A/E SERVICES

The Federal Acquisition Regulations (FAR) pertaining to A/E services were adopted to carry out the requirements of the Brooks Act (40 U.S.C. 1101-1104).

1. The regulations setting forth the procedures for choosing an A/E firm may be found in FAR subpart 36.6, "Architect Engineer Services." These procedures apply to the selection of all architectural and engineering services, including studies, surveys and analyses. The purpose of this section is to supplement the FAR subparts mentioned throughout the section and it should be read in conjunction with them.
2. The Short Selection Process described in the FAR may be utilized for contracts that do not exceed the small purchase limitation. The Board or the Chairperson of the Board can make the selection of the A/E.
 - a. Selection by the Board - The board shall review and evaluate architect-engineer firms in accordance with Board's functions, except that the selection report shall serve as the final selection list and shall be provided directly to the Contracting Officer. The report shall serve as an authorization for the Contracting Officer to commence negotiations in accordance with FAR 36.606.
 - b. Selection by the Chairperson of the Board - When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:
 - (1) The chairperson of the board shall perform the functions required in FAR 36.602-3.
 - (2) The OPDIV's designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.
 - (3) Upon receipt of an approved report, the chairperson of the board shall furnish the Contracting Officer a copy of the report, which will serve as an authorization for the Contracting Officer to commence negotiations in accordance with 36.606.
3. The CO shall make a public announcement of any planned A/E selection. The CO will provide a copy of the announcement to the Evaluation Board for the file. The specific requirements for publicizing Federal contract actions are set forth in the FAR. Announcements for design contracts expected to exceed \$25,000 must be published in the FedBizOpps, unless the contracts are to be procured through an existing task order or other procurement process through which the firms included in the procurement have been previously selected through full and open competition published in the FedBizOpps. The CO will determine the appropriate method and requirements for the public announcement for each project. The announcement should be published at least thirty days prior to the A/E selection, and the procurement schedule should take this requirement into consideration. For contracts expected to be \$25,000 or less, the CO shall as a minimum publicize the announcement in the vicinity of the project by displaying the notice at the procuring office and publishing it in the local daily newspaper. Affected professional societies in the area may be notified of the project consideration as well.

The public announcement should contain brief but clear statements consistent with the requirements of the FAR. It should include the project location, scope of service required, the relative

importance of the significant evaluation factors presented in descending order, range of construction cost, type of contract proposed, estimated start and completion dates, and date by which responses must be received. Any other specialized requirements (energy conservation, phased design/construction, etc.) or limitations on eligibility (small business or Buy Indian set-aside) should also be indicated. The amount of funding available for the project should never be announced. The public announcement should define what information the A/E must provide before and during the selection process. The information to be provided may include the "Architect-Engineer Qualifications" on SF 330, if the A/E firm does not have a current SF 330 on file with the agency. The agency may also request additional information, but the public announcement should clearly define what information will be considered and what the evaluation criteria will be.

B. DESIGN COMPETITIONS

A design competition is a method of awarding a design contract based on design excellence. A design contract should be awarded to the person or firm who submits the best design in the judgment of a jury in accordance with the rules of the competition. Design competitions are allowed under FAR 36.602 (b). When the Department approves the use of design competition, OPDIVs may evaluate firms on the basis of their conceptual design of the project. Characteristics that would make design competition an appropriate A/E selection method include:

- Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;
- Sufficient time is available for the production and evaluation of conceptual designs; and
- The design competition, with its related costs, will substantially benefit the project.

1. Design competitions can be open or invited. They can be one or two stages. Open design competitions are simply competitions that are open to all design professionals - most frequently registered architects. Invited competitions are design competitions where a select group of design professionals - typically highly regarded or recognized architects are invited to submit a design on a project.
 - a. One-stage competitions are competitions where the winner is selected by the jury and awarded the contract to design the project. This is the most common type of competition used by the private sector and internationally. The competitor bears all the cost and risk in entering the design competition. The Vietnam Veteran's Memorial is an example of a one-stage design competition.
 - b. A two-stage design competition is a competition that is usually open to all design professionals and the highest-ranking competitors are invited to compete in the second stage. It is common practice for the jury to give the second stage competitors a written critique of their design submission.
2. The competition announcement should feature a short description of the project and its location. Key dates such as competition registration deadlines and submission deadlines should be mentioned. The name of the jurors should be stated. Eligibility requirements should be clearly stated. The competition announcement should be widely disseminated in professional journals and newsletters to maximize interest in the competition.
 - a. Competition Registration - Persons or firms interested in competing in the design competition should be registered and pay a nominal entry fee to defray the cost of the competition.
 - b. Eligibility - Competitions should open to architects and engineers who are registered in the United States.

- c. Competition Security - To assure fair and impartial evaluations of competition submittals, names should not be used to identify competitors. Registrants for the competition should be assigned a number to assure anonymity. These numbers should be used throughout the competition process.
 3. The design competition document should consist of the competition rules, a site description, program of requirements, and competition submission format.
 - a. Rules. The rules of the competition must be clear and enforceable. Date and time for the competition submission deadline must be stated in the document. Failure to meet the deadlines and other violations of competition rules should be grounds for disqualification.
 - b. Site Description. The site description should contain a site analysis with a detailed site plan showing topography and other physical features. The site and the areas surrounding it should be illustrated, photographed, and discussed. The availability of utilities should be illustrated and discussed.
 - c. Program of Requirements. The Program of Requirements (POR) is key to the success of the design competition. The POR should provide the goals and objectives of the project. It should have space requirements, functional relationships, and other design requirements. The POR should clearly state the design problem.
 - d. Drawings, Photographs and Maps. The OPDIV should provide drawings, site plans, maps and photographs necessary for the competitors to complete their submissions. The OPDIV may require the competitors to use the drawings and maps as base drawings or backgrounds for the sake of consistency in the presentation of submissions.
 - e. Submission Format. The size and number of boards or panels should be clearly stated. The OPDIV should establish the type of media permitted for the presentation of the submission. If written documents are required a format should be established.
 4. The Jury selects the prize winners. The Jury prepares a report to the OPDIV Selection Authority in accordance with the FAR recommending selection in order of preference. The results of the competition are made public.

C. PREPARATION AND PUBLICIZING SOLICITATIONS

1. Preparation and Publicizing Solicitations: Solicitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders or offerors are prohibited. The solicitation should include all documents (whether attached or incorporated by reference) that prospective bidders or offerors submit with their bid or proposal.
 - a. Solicitations must be publicized pursuant to the requirements of FAR 5.2. Publication must provide sufficient time to enable prospective bidders or offerors to prepare and submit bids or proposals. Projects above OPDIV approval authority may not be advertised without an approved Facility Project Approval Agreement.
2. In addition, all HHS construction shall be executed in compliance with applicable Federal Acquisition Regulations plus Executive Orders, laws, and regulations relating to 1) labor, 2) energy, water conservation, sustainability, and/or other environmental matters; 3) safety; 4) building codes; and 5) fiscal responsibility.

D. GENERAL CONSTRUCTION PROCUREMENT GUIDANCE

The procurement of construction should be in accordance with the acquisition plan. There are only two basic types/ major categories of contracts. They are Fixed Price and Cost-Reimbursement. Generally, firm-fixed priced contracts shall be used to acquire construction, FAR 36.207. Firm-fixed-price contracts shall be used when the method of contracting is sealed bidding, FAR 14.104. FAR 16.2 addresses incentives and economic price adjustments in fixed-price contracts.

1. A firm-fixed-price contract provides for a price that is not subject to adjustment, except for appropriate modifications. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively, while imposing a minimum administrative burden upon the contracting parties.
2. Fixed-price contracts with economic price adjustment may be used for construction in certain circumstances as outlined in FAR 36.207(c) and when authorized in accordance with FAR 16.203.
3. Justification is required for other than firm-fixed-price contracts for construction, except on projects contracted with tribes on P.L. 93-638. The basis for using incentives or economic price adjustments in a fixed-price construction contract shall be documented in the acquisition plan.

E. SAFETY

The OPDIVs should assure that the Contractor is in compliance with federal and state safety regulations as they relate to construction. Although job safety is the responsibility of the contractor, the project officer should look for unsafe or potentially unsafe conditions. Should the project officer become aware of any such conditions, the project officer should notify the Contracting Officer and the contractor. If the unsafe condition is life threatening, the project officer should direct the contractor to take immediate action to remedy the situation, even to the point of issuing a "Stop Work Order", if necessary. If a "Stop Work Order" is issued, the project officer should notify the Contracting Officer of the pertinent facts as soon as possible.

G. GOVERNMENT OVERSIGHT

The OPDIV is responsible for performing oversight of all aspects of the contract to assure that construction contract requirements are met:

1. Quality Assurance in accordance with FAR Part 46. Government contract quality assurance shall be performed at any stage of performance and such places as may be necessary to determine that the work conforms to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify all work requiring surveillance and the method(s) of surveillance.
2. Changes: The FPAA is a binding agreement that establishes project scope, budget, and schedule. Changes at this level of development are costly (construction phase) and should be avoided. Each OPDIV should have a formal change control process. Technical changes due to differing site conditions or errors and omissions by the architect/engineer or the Government should be approved at the OPDIV level. Programmatic changes should also be approved at the OPDIV level. The Contracting Officer is the only person with authority to issue a change or modification to the construction contract. The Contracting Officer may delegate authority to the Project Officer for field changes. If the Program of Requirements (POR) is exceeded or if the cost exceeds the limits of the FPAA, approval must be obtained through HHS using the FPAA process. The OPDIVs

shall assure that the approved changes are properly implemented into the project. See also Section 2-3 for changes requiring Departmental approval through the FPAA.

4-6-30 REPORTING REQUIREMENTS

BID REPORT FOR CONSTRUCTION CONTRACTS

The OPDIV shall submit a bid report to the Office for Facilities Management and Policy (OFMP) at the completion of the bid/proposal evaluation process. A bid report is required only on those projects requiring HQ approval per the FPAA policy. The report is for OFMP information only. A sample bid report form is provided as Exhibit X4-6-D. The Bid Report may be in a different format such as the OPDIV's standard bid tabulation format as long as it contains the information included in the Exhibit.

CHECKLIST TO AWARD ARCHITECT/ENGINEER DESIGN CONTRACT

1. PRIOR TO ADVERTISEMENT
 - a. Certify availability of funds (HHS 393) _____
 - b. Complete Program of Requirements (design criteria) _____
 - c. Develop A/E Statement of Work including time schedule _____
 - d. Develop estimate of facility construction costs _____
 - e. Develop estimate of A/E fee or costs _____
 - f. Develop management plan _____
2. A/E EVALUATION BOARD
 - a. Clear delegation of appointing authority _____
 - b. Appoint proper persons and numbers to serve as Board members _____
 - c. Appoint Board Chairman, an agency representative and a Recorder _____
 - d. Establish evaluation criteria. _____
 - e. Establish numerical weighting factors. _____
3. ADVERTISEMENT
 - a. Announce in Fed Biz Ops (Old: Commerce Business Daily) _____
 - b. Include clear statement of project _____
 - c. Do not include cost estimate _____
 - d. Include selection evaluation criteria in descending Order of importance _____
 - e. Emphasize special requirements _____
4. PROCEDURE OF THE EVALUATION BOARD
 - a. Establish pre-screening criteria and pre-screen A/E Firm fairly _____
 - b. All members shall evaluate all A/E firms. _____
 - c. Minimize discussions on A/E firm qualifications _____

- d. Post all A/E firms scores _____
- e. Rank according to numbers of 1st, 2nd, 3rd and 4th place
Votes not by numerical values _____
- f. Determine list of finalists _____
- g. Conduct equal time A/E firm interviews. _____
- h. Provide necessary information to the approving authority
and obtain approval. _____
- i. Document all actions. _____

5. NEGOTIATIONS

Make certain the following items have been satisfied prior to negotiation meetings.

- a. Approval of A/E Selection by the approving authority. _____
- b. Funds are available _____
- c. Government Project Manager assigned _____
- d. Program of Requirements furnished to A/E Firm _____
- e. A/E Statement of Work furnished to A/E firm. _____
- f. A/E fee or costs estimated by government _____
(Prefer A/E uses same format for estimate)
- g. Facility Construction cost estimate completed. _____

6. A/E CONTRACT AWARD

Upon successful negotiations, the following items must be satisfied:

- a. For Project where fees exceed \$100,000; conduct
audit to confirm basis of figures used in negotiations. _____
- b. Document agreement of all parties on contract content
including payment and time schedule. _____
- c. File one copy of contract with original signatures, and
give two copies to the paying authority. _____

SAMPLE
SECTION C
STATEMENT OF WORK

January 2004

A. BACKGROUND:

The General Laboratory for Cellular Biology (GLCB) will house the staff of a special task force created by a Presidential Commission on Health. This task force is composed of eminent scientists from different Departments and Centers (DC's), within the Agency. The Task Force is charged with the responsibility to find the cause and cure of a recently discovered virus that attacks the human immune system. The Task Force is to report directly to the Director. For organizational and administrative purposes, the Department of Allergies and Infectious Diseases (AID) will be the lead institute. However, the Task Force will have its own director, executive officer, and scientific director. Extramural Research will be coordinated through AID.

B. PROJECT DESCRIPTION:

The GLCB will accommodate 7 laboratories, shared analytical laboratories, and support space. The laboratory facility will house the staff of the Scientific Director, administrative space associated with the laboratories as well as ancillary space. Since the Task Force consists of scientists from different DC's, it is important that they interact with one another. It is expected that the scientist will spend long hours in the laboratories; therefore it is important that the workspace be pleasant. The quality of the workspace should not be compromised. Unlike most of the laboratories at the agency, this facility will have a high intensity of instrument laboratories. Once the Task Force's work is completed, the facility will become a part of the Director's reserve. It is important that the design consider flexibility and expansion. The construction cost is estimated to be \$ 35,000,000.00.

C. CODES & STANDARDS

1. Model Building Codes

The GLCB shall be designed in compliance with applicable standards of the model building code for the location of the facility. The design may use other appropriate codes and industry standards such as: the Life Safety Code (NFPA 101), Fire Protection for Laboratories Using Chemicals (NFPA 45), Standard for the Installation of Sprinkler Systems (NFPA 13) and Health care Facilities (NFPA 99). (Note: HHS is an agency of the Government of the United States of America, derives its authority from the Congress of the United States, and is not subject to laws, ordinances, regulations established by state and local governments or authorities of a lesser jurisdiction.)

2. Federal Regulations

The GLCB shall be designed in compliance with all applicable Federal Regulations including but not necessarily limited to the following: Uniformed Federal Accessibility Standards, OSHA 29CFR 1910; The National Environmental Policy Act of 1969 (NEPA); The Endangered Species Act; The National Historic Preservation Act of 1966; The Archeological and Historic Preservation Act; The Wild and Scenic Rivers Act; 40CFR Environmental which includes: Safe Drinking Water Act, Clean Air Act, Clean Water

Act, Toxic Substance Control Act, Solid Waste Disposal Act, and RCRA; Executive Order 11990 (Wetlands); Executive Order 11988 (Floodplains); Executive Order 12088 (Compliance with State environmental laws); National Capital Planning Commission (NCPC) "Master Planning Regulations"; Energy Policy Act of 1992; etc.

3. Departmental Regulations

The GLCB shall be designed in compliance with NIH Publication 85-23 "Guide for the Care and Use of Laboratory Animals", plus, the U.S. Public Health Service (PHS) and the American Association for Accreditation of Laboratory Animal Care (AAALAC) accreditation standards. GLCB shall be designed in compliance with HHS Publication No. (CDC) 93-8395 "Biosafety in Microbiological and Biomedical Laboratories, 4th Edition, May 1999

4 Agency Design Policies

The GLCB shall be designed in compliance with the applicable provisions of the Agency Architectural and Engineering Design Policies and Guidelines and the Agency Planning and Programmatic Guidelines

D. SCOPE OF SERVICES

1. General:

The Architect/Engineer (A/E) shall provide all professional services; material and labor necessary to design the GLCB.

2. Submittals and Deliverables

The A/E shall make three (3) design submittals at the following stages: concept, design development and contract documents.

a. Schematic Design

The schematic design constituting 30% design completion consists of but not necessary limited to the following: schematic site, floor plans (for each design discipline), elevations and sections drawn to scale, exterior and interior perspective or axiometric drawings necessary to explain the concept, table of content specifications, broad order of magnitude (square foot) cost estimate, storm drainage, structural, HVAC, plumbing and electrical calculations.

b. Design Development

Design development constituting 60% of design completion consists of but not necessary limited to the following: site grading and drainage plan, site utilities plan, site pavement plan, landscape plan, sediment control plan, site profiles, definitive floor plans (for each design discipline), elevations, cross, longitudinal and wall sections, interior elevations, reflected ceiling plans drawn to scale, final perspective or axiometric drawings necessary to explain the design for presentation purposes, finish and door schedules, plumbing raiser diagram, one line electrical diagram, communication and data layouts and one line diagrams, out line specifications, systems cost estimate, final storm drainage, structural, HVAC, plumbing and electrical calculations.

c. Construction Documents

Construction documents constituting 100% of design completion consists of but not necessary limited to the following: site grading and drainage plan, site profiles, site utilities plan, site pavement plans and profiles, landscape plan and plant schedules, sediment control plan, final floor plans (for each design discipline), elevations, cross, longitudinal and wall sections, interior elevations, reflected ceiling plans drawn to scale, finish and door schedules, details for each discipline drawn to scale, plumbing raiser diagram, one line electrical diagram, communication and data layouts and one line diagrams, specifications, quantity takeoff cost estimate, and bid documents

E. GOVERNMENT FURNISHED ITEMS

1. Program of Requirements

The A/E shall design the GLCB in accordance with the Program of Requirements.

2. Agency Master Plan

3. Topographic Survey of the site

4. Geo-technical Report and recommendations

F. INTERFACE & COORDINATION:

1. Formal Meetings

Progress meetings will be held at the Agency, 9000 Stoneville Pike Bath, Maryland. The purpose of the progress meetings is to formally review the submittal, resolve outstanding issues, and to provide Agency programmatic and technical direction.

The Government will provide appropriate representatives authorized to make technical and programmatic decisions necessary to maintain progress.

The A/E shall send appropriate representatives consistent with the level of development and the nature of review. The representative(s) shall be qualified and authorized to make the technical decisions as required to maintain effective progress. The A/E shall take minutes of the meeting and distribute a narrative summary to the persons in attendance as well as the Project Officer within seven (7) days after each meeting.

2. Interface:

a. DC Executive Officer:

The Executive Officer (EO) or designee will be the liaison between the DC and DES.

b. Oversight Committee:

The Associate Director for Research Services (ADRS) will establish an oversight committee. The committee will oversee the development of the GLCB.

c. User Group:

The user group is a customer (decision making) group that may consist of scientific directors, laboratory chiefs, branch chiefs, AOs, section chiefs etc. within one DC to provide programmatic direction and requirements.

d. Process Action Team (PAT):

A PAT is a group that provides programmatic and technical recommendations for the GLCB when more than one IC is involved. The PAT consists of members from each involved IC and ORS and serves as an advisory group for the Oversight Committee.

e. Division of Engineering Services:

The Division of Engineering Services (DES) has the overall responsibility for the development of Agency buildings and facilities designs. The Design and Construction Branch has been delegated the authority to carry out this responsibility for DES.

f. Design and Construction Branch (DCB) Project Officer:

The Project Officer (PO) will manage the design and construction activities of the project.

g. Contract Specialist:

The contract specialist is responsible for administrating design and construction contracts.

G. SCHEDULE

The A/E shall complete the design of GLCB in 210 calendar days

1. Schematic Design

The A/E shall submit the concept design within 60 calendar days after notice to proceed.

a. Government Review

The Government will review the concept design and submit comments within 30 calendar days. The Government and the A/E will meet with 15 calendar days after comments are submitted to resolve any outstanding issues. Upon acceptance of the submission the A/E shall proceed to the next submittal.

2. Design Development

The A/E shall submit design development documents within 60 calendar days after notice to proceed.

a. Government Review

The Government will review the design developments and submit comments within 30 calendar days. The Government and the A/E will meet with 15 calendar days after comments are submitted to resolve any outstanding issues. Upon acceptance of the submission the A/E shall proceed to the next submittal.

3. Contract Documents

The A/E shall submit design development documents within 30 calendar days after notice to proceed.

a. Government Review

The Government will verify that all previous comments are incorporated and the documents are complete and accept the contract documents.

H. OPTIONS:

At the option of the Government the A/E shall provide the following post design activities

1. Construction Administration

The A/E shall administer the construction contract GLCB in accordance with establish professional standards.

I. NIH PROJECT OFFICER:

The Project Officer for the GLCB will be: Richard Fish, AIA

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Sample Selection Evaluation Form

Ratings: Excellent = 4, Good = 3, Fair = 2, Poor = 1, and Unacceptable = 0
Rating times the weight = the score

Name & Location of Firm								
	Weight	Criteria	Score	Rating/Remarks	Score	Rating/Remarks	Score	Rating/Remarks
Qualifications		Staff Capability						
		Staff Registration						
		Staff Experience						
		Sub Total						
Experience		Experience. w/ Building Type						
		Quality of Experience.						
		Building Performance						
		Sustainable Design						
	Sub Total							
Past Performance		Federal Government						
		State Government						
		Local Government						
		Private Sector						
	Awards							
	Sub Total							
Capacity		Team Resources						
		Workload						
		Staff Availability						
		Sub Total						
Location		Wash Metro Area						
		Mid Atlantic Region						
		CONUS						
		Sub Total						
Other								
		Sub Total						
		Total						

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SECTION 4-7 LEASE ACQUISITION

4-7-00	Policy
10	Procedures
20	Guidance and Information
30	(Reserved)
X4-7-A	Suggested Award Factors
X4-7-B	List of Leasing Forms and Clauses

4-7-00 POLICY

The Administrator of General Services delegated leasing of below prospectus level general-purpose space to The Secretary of the Department of Health and Human Services, effective October 14, 1996. The Secretary, HHS has re-delegated this authority to National Institutes of Health, Indian Health Service, Centers for Disease Control and Prevention, Food and Drug Administration, and the Program Support Center.

The Office of the Secretary has overall responsibility for management and provision of technical and administrative services to all facility development and operations in support of HHS' mission, including real estate, acquisition services, property management, design, construction, facilities planning and environmental protection. The Office of the Secretary, Office for Facilities Management and Policy (OFMP) promulgates and enforces overall space policy, including build-out standards, leasing, and safety policy. The OFMP must approve all leases to ensure adherence to space utilization standards. Additionally the Office of Public Health Emergency Preparedness (OPHEP) reviews all leases for the physical security. OFMP will issue written approval of the space acquisition.

Federal agencies must acquire and utilize the space in accordance with all applicable laws and regulations, including, but not limited to, the Competition in Contracting Act (CICA), Federal Management Regulations (FMR), Executive Order 12072, Executive Order 13006, Davis Bacon Act, and the Federal Acquisition Regulations (FAR) in order to:

1. Protect the public interest by conservation of property and prudent management of resources;
2. Effectively support the HHS and HHS missions by assuring facilities operation and performance of maintenance at a level of adequacy that will continually provide attractive and functional facilities and a high quality work environment, comparable to industry, for HHS employees and the public they serve.

In addition to Federal Regulations and Executive Orders, HHS OPDIVs are required to adhere to the HHS Space Utilization Policy issued on July 14, 2003.

Apart from the 1996 GSA-delegated leasing authority, HHS OPDIVs have legislative and/or regulatory authority to perform leasing activities. These authorities are cited below:

1. 41 CFR 102-73.195 – authorized HHS agencies to lease laboratories for periods of up to five years (including options);
2. Public Law 94-437, 810, as amended, Indian Health Care Improvement Act, authorizes the IHS to enter into leases with Indian Tribes for periods of up to 20 years;
3. Public Law 93-638, 105(1), Indian Self-Determination and Education Assistance Act, requires IHS to enter into leases (upon request) with Indian Tribes and tribal organizations for tribally-operated programs;

4. Public Law 100-690, 1987 OMNIBUS Drug Supplemental Appropriations Act, authorizes IHS to lease space for Youth Regional Treatment Centers for American Indians and Alaska Natives (in-patient services);
5. Section 413(b)(6)(C) of the PHS Act (42 USC 285(d)(2)) authorized the Director, National Cancer Institute to acquire space in the District of Columbia (DC) or communities adjacent thereto for the use of the Institute for a period not to exceed ten years.
6. Section 421(2)(C) of the PHS Act (42 USC 285-3(b)(2)(c)) authorizes the Director, National Heart Blood and Lung Institute to lease space in DC or communities adjacent thereto for the use of the Institute for a period not to exceed 10 years.

DEFINITIONS.

For the purposes of Section 4-7 of this manual, the following definitions shall apply.

Acceptance of Space – A certification and commitment from an Agency to occupy space. Based on Agency acceptance, GSA may commit to the use of Government funds to award a lease, make a commitment for initial alterations, and/or establish a date of occupancy. Agencies are financially responsible for losses incurred by the Government caused by any failure by the Agency to fulfill a commitment to accept space.

Agency-Controlled Space – Federally owned, leased, or controlled space acquired or used by Federal Agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended. It also includes space for which GSA has delegated authorities for acquisition, use, or disposal to other agencies.

Available Space – The total amount of space that is currently being marketed as available for lease in a given period. It includes any space that is available, regardless of whether the space is vacant, occupied, available for sublease, or available at a future date.

Build-Out – Refers to the preparation of space for occupancy including lighting, outlets, partitions, doors, carpet, paint, etc. This could mean either demolition of existing partitions, doors, outlets, etc., and then new interior construction or construction from a shell to meet contract terms.

Build-to-Suit – A term describing a particular property, developed specifically for a certain occupant to occupy, with structural features, systems, or improvement work designed specifically for the needs of the tenant. A build-to-suit can be leased or owned by the tenant. In a leased build-to-suit, a tenant will usually have a long-term lease on the space.

Central Business District – the designation of a Central Business District (CBD) and Suburban refer to a particular geographic area within a metropolitan area, describing the level of real estate development found there. A high density, well-organized core within the largest city of a given metropolitan area, characterizes the CBS.

Construction Documents – Scaled, hard-line drawings communicating a client's exact requirements for build-out. A construction document package contains full and complete furniture plans, finish plans, telephone/electrical plans, construction/demolition plans, and plumbing, mechanical, structural, and electrical engineering plans

Delineated Area – The specific boundaries within which space will be obtained to satisfy an Agency space requirement.

Delivery Date – The date a building completes construction and receives a certificate of occupancy.

Design Intent Drawings (DIDs) – Hard-line drawings of sufficient detail to communicate the client’s requirements for build-out. Generally includes full furniture and architectural plans with telephone and electrical locations. Does not include structural, mechanical or engineering drawings.

Existing Inventory – the square footage of buildings that have received a certificate of occupancy and are able to be occupied by the tenants. It does not include space in buildings that are either planned, under construction or under renovation.

FedBizOpps – Formerly titled synopsis of United States Government Proposed Procurement, Sales and Contract Awards. Publishes not only these facts, but also subcontracting opportunities and advance notices of proposed contracts.

Federally Leased Space – Space for which the United States Government has a right of occupancy by virtue of having acquired a leasehold interest.

Leased Space – All of the space that has a financial lease obligation. It includes all leased space, regardless of whether the space is currently occupied by a tenant. Leased space also includes space being offered for sublease.

Lessor – One who lets property under a lease.

Market – Geographic boundaries that serve to delineate core areas that are competitive with each other and constitute a generally accepted primary competitive set of areas. Markets are building type specific, and are non-overlapping contiguous geographic designations having a cumulative area that matches the boundaries of the entire Region. Markets can be further subdivided into sub markets.

Owner – The company, entity, or individual that holds title on a given building or property.

Request for Space – A written document upon which an Agency provides GSA with the information necessary to assign space. A request for space shall be submitted on Standard Form 81 and Standard Form 81-A, and the Space Requirements Questionnaire. The request shall, at a minimum, contain descriptions of the amount of space, personnel to be housed, geographic area, time period required and funding availability.

Quoted Rental Rate – The asking rate per square foot for a particular building or unit of space by a broker or property owner. Quoted rental rates may differ from the actual rates pay by tenants following the negotiation of all terms and conditions in a specific lease.

Rent – The amounts GSA charges for space and related services to its agencies with tenancy in GSA-controlled space. Rent is capitalized to differentiate it from the “rent” that GSA pays lessors.

Rental Rates – The annual cost of occupancy for a particular space quoted on a per square foot basis.

Sealed Bid – A prospective contractor’s reply to the solicitation form used for formally advertised procurements.

Solicitation for Offers (SFO) – Request submitted to prospective offerors. Means invitation for bids in sealed bidding and request for proposals in negotiations per GSAM 570.102.

Space - The area within the confines of buildings and land incidental to their use that is under Federal agency's custody and control.

4-7-10 PROCEDURES

General procedures of lease acquisition should follow the GSA Pricing Desk Guide.

A. MARKET SURVEY PROCEDURES

A market survey is used to identify potential sources that meet HHS requirements for real property. Market surveys may use information available within GSA or other sources that will meet the Government's minimum requirements (GSAM 570.301). All potential facilities must be surveyed and judged in the same manner and use the same criteria. Full documentation is necessary to avoid any potential claims of unfairness. The market survey is utilized as a means of obtaining the best space and at the best value to the Government. OPDIVs using delegated leasing authority for leases exceeding the simplified lease acquisition threshold must obtain offers from the maximum number of qualified sources capable of meeting the government's minimum requirements. All documentation is to be maintained in the procurement file.

The GSA local office can provide basic information about what is available and market rates. The Local Office can aid the Contracting Officer in preparing public advertisements; determining competitive responses and offers, based on market conditions; and making an award that represents the best value to the Government. In addition to the GSA local office, there are other sources of market information available to the Contracting Officer. For example market data can be gathered from local newspapers, real estate brokers, local business people, local board of realtors, recent government market surveys and resultant offers, recent appraisals, the local chamber of commerce, real estate publications by the Building Owners and Managers Association (BOMA), Black's Guide, and the Crane Business Report. Touring desirable locations is another method for gathering marketing data.

The acquisition of federal space requires public advertisement in all non-exempt leasing actions for blocks of space of more than 10,000 square feet. Such advertisements must be publicized in local newspapers and FedBizOpps. In cases where the Government proposes to lease a building to be constructed on a predetermined site, the proposed acquisition must be publicized in FedBizOpps.

Advertisements should broadly define the requirements of space and give all interested parties information to respond to the announcement, including delineated area. The delineated area is the specific boundaries (by streets located to the north, south, east, and west) within which space will be obtained to satisfy the HHS space requirement. The advertisement usually runs once. In order to ensure competition, the Contracting Officer may run other ads in real estate trade journals.

1. Market Survey Form: The HHS will use GSA Form 3627 for market surveys. All items or blocks in the form must be completed. The form should be used to record information on each property surveyed. Supporting documents such as floor plans, photos, or tenant directories that are provided should be attached to the form. Completed forms should be kept with the lease solicitation file. The listing file should contain forms for all facilities surveyed for the solicitation. The successful offeror's form must be placed in the official lease file.
2. Discussions with Offerors: A market survey is for information only and the Government should not enter into negotiations with a potential offeror. The government shall inform the offeror that a market survey is not a solicitation for offer or commitment on the Government's part whatso-

ever. The offeror should be informed that an official solicitation for a written offer would be sent if the property meets the minimum standards. Informal discussions are permitted that allow the offeror to state the asking price.

The Government will avoid stating any opinion regarding the acceptability of the property. It is permissible during the market survey to tell the offeror that the property will probably not be considered when major defects are noted. However, the offeror should not be prohibited from competing, but note that the offer will not be considered unless the defects are corrected before occupancy.

B. LEASE ACQUISITION PLANNING PROCEDURES

Lease acquisition strategy is to leverage the market place by providing the best value for the HHS in acquiring and administering leased space. Lease acquisition strategy will also further define the Solicitation for Offers (SFO). Each OPDIV is required to ensure written availability of funds through the OPDIV Chief Financial Officer (CFO).

Executive Order 12072 requires that first consideration to meet space needs in urban areas be given to the centralized community business area, or central business district (CBD). The local government defines central business districts.

1. Space Available within HHS Current Lease Inventory: The OPDIV Real Estate Specialist should first review HHS's lease inventory in the delineated area by contacting the HHS Office of Facilities Management and Policy to determine if space is available to meet the requirement. Any existing lease should have two years remaining on the lease term.
2. Space Available within GSA Current Lease Inventory: GSA must be notified of pending lease acquisitions and GSA must certify that no space is available. The Real Estate Specialist should review GSA lease inventory in the delineated area to determine if space is available to meet the requirement. The current GSA inventory can be found at <http://www.iolp.gsa.gov>.
 - a. No Space Available: If there is no space available in GSA's inventories the Real Estate Specialist must be notified in writing or e-mail by GSA and the lease acquisition process may begin.
 - b. Special Purpose Space: These types of space are generally not available through GSA; therefore HHS OPDIVS may enter into Direct Leases. Refer to 41 CFR 102-73.
3. Full and Open Competition: FAR 2.101 defines full and open competition as permitting all responsible sources to compete. The procedures for full and open competition are as follows:
 - a. Negotiated Acquisitions
 - b. Sealed Bids
4. Other than Full and Open Competition: The Competition in Contracting Act of 1984 permits under certain specified conditions, contracting without providing for full and open competition. FAR 6 covers the requirements, and approvals for other than full and open competition. The requirements are:
 - a. Only one responsible source and no other supplies or services will satisfy agency requirement;
 - b. Unusual and compelling urgency;
 - c. Industrial mobilization; engineering, developmental, or research capability, or expert services;

- d. International agreement;
 - e. Authorized or required by statute;
 - f. National security; and
 - g. Public interest (FAR 6.302)
5. Competition for Leases not exceeding the Simplified Lease Acquisition Threshold: Simplified lease acquisition procedures will be used for procurements that do not exceed the simplified lease acquisition threshold of \$100,000 average net annual rent for the term of the lease, including option periods excluding operating cost.
- a. Solicit at least three sources to promote competition to maximum extent possible
 - b. When repeated requirements for space occur in the same market and if practicable, invite two sources not included in the most recent solicitation to submit offers.
 - c. If one source is solicited, document the file with explanation for the lack of competition.
 - d. If sources that are not solicited learn of the requirement and express an interest, their space must be considered if they meet, or can be made to meet the requirements.

C. METHODS OF LEASE PROCUREMENT

1. Sealed Bidding: Sealed bidding requires that all bidders be given a definitive set of requirements and they offer precisely the product or service specified. Evaluation is made as to responsiveness, responsibility and price. Negotiation or discussion is not allowed. “Federal Property Administration Services Act” (FPASA) § 303(a) (2) (a), and FAR 6.401 require that an agency solicit sealed bids if:
- a. Time permits solicitations, submissions, and evaluation of sealed bids.
 - b. The award will be made solely on the basis of price and price related factors.
 - c. It will not be necessary to hold discussions with offerors.
 - d. There is reasonable expectation of receiving more than one sealed bid.

The use of sealed bidding is usually not practical; unless the building site is pre-selected on the site in accordance with Government-furnished construction documents for lease to the government.

2. Negotiated Acquisition: Negotiated acquisition is any method of purchase or leasing that is not sealed bidding. FPASA § 303(a) (2) (b) directs agencies when sealed bidding is not appropriate. Negotiated acquisition is the preferred method of acquiring lease space because it is necessary to conduct discussions with offerors about their proposals and factors other than price must be considered in making an award.

D. LIMITS TO HHS/OPDIV DELEGATED LEASING AUTHORITY

The HHS’ delegated leasing authority is limited to projects with a net annual rent (annual rent less operating cost) that is not expected to exceed the prospectus threshold. Projects expected to exceed the threshold require Congressional approval and must be performed by GSA. The prospectus threshold is indexed and changed annually. Refer to Internet Reference Information for link to annual Prospectus Threshold. See Section 4-7-20A for link to current prospectus reporting thresholds

E. SHORT-TERM LEASE PROCEDURES

Leases for emergency space, short-term space, and swing space must be pre-approved by GSA and HHS.

F. SOLICITATION FOR OFFERORS AND AWARD PROCEDURES

The Solicitation for Offers (SFO) is required for all Government lease acquisitions and must include all necessary information to permit an offeror to submit a proposal. The SFO is the foundation for the entire lease negotiation process and will become part of the lease. FMR 102-73.100 requires executive agencies to use the Competition in Contracting Act of 1984 for full and open competition among suitable locations meeting minimum government space requirements. The SFO must set performance criteria by which the lessor must perform and it must also set the evaluation criteria by which proposals will be evaluated. The evaluation criteria must be set forth in the SFO with clear specificity so that offerors making proposals will know in advance by what criteria their proposals will be evaluated. The evaluation criteria in the SFO cannot be overly restrictive. The SFO must disclose the relative order of importance of the evaluation factors in the evaluation criteria. When no order is stated in the SFO then it will be presumed that all of the criteria carry the same weight. The SFO must state whether price is more important or equal to the technical factors. See Exhibit X4-7-A for suggested evaluation factors for award and Exhibit X4-7-B for relevant forms.

The government Contracting Officer or the Realty Specialist, has the responsibility for selecting and incorporating the general provisions, required clauses from the General Services Administrative Manual (GSAM) that sets forth all the clauses that can be included in a government lease. The solicitation is a written document and the provisions selected are based on particular requirements for each lease and the date of delivery or date of performance, and the solicitation must clearly establish the OPDIV's needs.

A sample SFO for leasing can be found on the GSA website. This sample contains appropriate terms, conditions, and clauses required for the lease contract.

Award Procedures: Develop an abstract for offers to determine responsiveness to the SFO and Communicate with offerors to discuss responsiveness and provide an opportunity to correct deficiencies. (Suggested award factors are provided as Exhibit X4-7-A.) The award letter will formally transmit the executed lease and transmits SFO amendments.

G. PREOCCUPANCY LEASE ADMINISTRATION

1. **Requirements for Build-Out:** The lease provides consideration for Lessor to provide space to meet the Government's needs before the Government can occupy it. Rent will not commence until space is provided in accordance with the terms and conditions in the lease.
2. **Program Documents (Section 9):** The Program Documents section of the lease is a contract document that is binding on both the Government and the Lessor. It is the primary basis for tenant build-out. All parties involved in the development and negotiation of the Program Documents must realize and clearly understand that Program Documents cannot be changed without consideration of cost, time and scope. It is very important to prepare a set of Program Documents that is clear, concise, correct, and complete.
3. **Performance Requirements (Sections 4 through 8 of the Lease):** The lease provides the performance requirements for the build-out for the lease. These sections also contain provisions that prescribe contractual obligations with respect to r tenant build-out. All parties involved in the development and

negotiation of the lease must realize and clearly understand that these sections cannot be changed without consideration of cost, time and scope.

4. **Government Design Review:** The Government shall review the Lessor's build out plans and specifications for compliance with the Program Documents and the lease for the build-out. The review intervals shall be established in the lease or through agreement between the Contracting Officer and the Lessor.
5. **Government Acceptance and Measurement of Space:** The Government shall conduct a final walk-through with the Lessor of the build out space to determine if the space is substantially complete. The Government and the Lessor will identify visible deficiencies in the built out space and establish a punch list for the Lessor to complete at a mutually agreed upon time between the Government and Lessor.
6. **Measurement of Space:** Space shall be measured in accordance with (GSA Space Measurement Guidelines) ANSI/BOMA Standard (ANSI/BOMA Z65.1 – 1996)
7. **Existing Conditions Survey:** Before taking beneficial occupancy the Government shall prepare an existing conditions survey report to document the conditions of the premises. The Existing Condition Survey will be the basis for determining the Government's responsibility at the termination of the lease.
8. **Beneficial Occupancy:** Once the Government and the Lessor determine and agree that the build-out is substantially complete the Government may take beneficial occupancy.
9. **Lease Performance Period:** Rent begins when the Government occupies the space or at substantial completion. The Government and the Lessor must execute a Supplemental Lease Agreement (SLA) to establish the performance period of the lease and to ratify the actual rentable space.
10. **Default in Delivery – Time Extensions:** If the Lessor fails to do the work with diligence that will ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate the lease. The Lessor and the Lessor's surety, if any shall be jointly and severally liable for any damages to the Government resulting from the termination of the lease.

H. DESIGN AND BUILD-OUT PROCEDURES

The design and build-out phase of the project further develops the preliminary programming information of the solicitation into the documents necessary for a contractor to construct, or build-out the space interior. The Government is not privy to the Lessor's design or construction contract and therefore has little oversight; however, the Lessor must deliver the space in according to the conditions specified in the lease.

During the design period, the architect/engineering firm (A/E) meets with the agency and creates scaled drawings indicating the agency's desired space layout and finishes. The drawings are developed in iterations starting with a simple partition layout. Adding electrical/voice/data locations, and other general space attributes constitute the Design Intent Drawings (DIDs). The drawings review intervals are established in the lease or through agreement between the Contracting Officer and the Lessor. This process repeats several times, refining the scope of the build-out, and culminates in complete space drawings and specifications, which are called the contract documents.

At or near the completion of the contract documents, the Lessor must obtain pricing for the work shown on the contract documents. The preferred pricing method is for the lessor to compete the build-out scope of work. This may be a competition among general contractors, or with a lessor-assigned general contractor, and a competition of the varying trades, e.g. carpenters, electricians, etc. There are other variations on the theme of integrating an atmosphere of competition into the build-out pricing. However, due to programmatic or scheduling requirements, the cost of the build-out may be negotiated with a single contractor. Regardless of build-out procurement method, a base cost of work is set, and the lessor provides the build-out schedule. This schedule must set forth significant milestones to ensure that the lease occupancy date will be met. The schedule is critical to coordination of the Government's contractors, i.e. voice/data cabling, furniture/fixtures/equipment (FFE), and physical relocation. The SFO contains a paragraph addressing liquidated damages which are penalties paid by the lessor should there be a lessor-caused delay in delivery of the space. Numerous aspects of the build-out phase are administrative. These include holding regular progress meetings, procedures for changes in the work, channels of communication, government representatives and their limits of authority, and the coordination of Government direct contracts, and the contractor's access to the site and work hours. The build-out is complete when the contractor has completed all work and the local building officials have issued a certificate of occupancy (CO).

When notified by the contractor that all work is complete, a final walk-through for space acceptance occurs. This walk-through is usually coincident with the creation of a contractor deficiency list, or punch list, of omitted or substandard work items. With a certificate of occupancy, and agreement that the space is substantially complete, the Government may occupy the space. The contractor is typically allowed to work minor punch list items as the Government occupies the space.

4-7-20 GUIDANCE AND INFORMATION

A. INTERNET REFERENCE INFORMATION

The following web sites, internet links, and references provide guidance and information relevant to federal leasing.

Federal Management Regulations, are found within Title 41, Subtitle C of the Code of Federal Regulations –

<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200141>

Executive Orders including 12072 and 13006 -

<http://www.gsa.gov/Portal/gsa/ep/indexView.do?pageTypeId=8199&channelId=-13339>

Public Law 93-638 – <http://www.ihs.gov/NonMedicalPrograms/chr/pl93-638.cfm>

Public Law 100.690 – www.hawaii.edu/ohr/emp-d&b/drug/pl100690.pdf

42 USC 285(d) (2) – a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/julqtr/pdf/41cfr101-17.0.pdf

Davis Bacon Act – <http://www.dol.gov/esa/whd/contracts/dbra.htm>

FAR clauses including 6.202, 6.203, 6.204, 6.205, 6.302, 6.303, 6.304, 6.401. 9.104-1, 15.208, 15.303, 15.305, 15-306, 15.505, and 15.506 at <http://www.arnet.gov/far/>

General Services Administrative Manual (GSAM) including clauses GSAM 501.603, 570.301, 570.303-3, 570.306, 570.307, 570.307, 570.308, 570-309, and 570.7 at
http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=13604&noc=T

GSA forms and standard forms such as SF 2, GSA 1166, GSA 1364, GSA 3626, GSA 3627, and GSA 3628 are available at <http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL>

FPASA 303 - http://www.dtic.mil/envirodod/Policies/Archives/appndx_f.htm

Prospectus reporting thresholds -
http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=16247&noc=T

ANSI/BOMA Z65.1-1996 – Standard Method for Measuring Floor Area in Office Buildings is available for purchase at
<http://www.boma.org/ProductsAndResearch/Standards/StandardMethodForMeasuringFloorAreainOfficeBuildings.htm>

Energy Policy Act of 1992 - <http://www.epa.gov/radiation/yucca/enpa92.htm>

Security Standards for Leased Space ISC Subcommittee Final Report, dated May 16, 2003.

Americans With Disabilities Act (ADA) - <http://www.usdoj.gov/crt/ada/adahom1.htm>

Competition in Contracting Act of 1984 –
http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8199&channelId=-13340&P=PRCOE&contentId=11625&contentType=GSA_BASIC

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SUGGESTED AWARD FACTORS & EVALUATION OF BUILDINGS AND SITES

- A. Ability to meet the Requirements in the Solicitation for Offers
1. Adequate Space to Meet the Requirements
The Offeror must provide adequate space to meet HHS needs. If the offeror's proposal does not provide adequate space, the proposal may be considered as non-responsive.
 2. Configuration of Space to Meet the Requirements
The Offeror must provide space that meet HHS's functional and adjacency requirements. If there is a need for the space to be contiguous, it should be required in Program of Requirements attached to the SFO. The efficiency of circulation between and with space should be considered.
 3. Adequate Structural Capacity.
The structural system of the property must be able to accommodate HHS needs. Unusual structural requirements should be noted in the Program of Requirements attached to the SFO.
 4. Adequate Building Systems
The Offeror's building systems (i.e. HVAC, plumbing, fire protection, electrical and communications systems) must be adequate to meet HHS's needs. Unusual building systems should be noted in the Program of Requirements attached to the SFO.
- B. The Ability to Deliver a Turnkey Facility in Accordance with the Government's Requirements.
1. Minimum construction needed to meet the Government's Requirements.
Offers that can meet the requirements as is or with the least amount of construction is desirable because it will allow the HHS to occupy the space soon after award of lease at a lower rent.
 2. Offers with earliest delivery date.
Consideration should be given to the ability of the offeror to deliver the space at the earliest possible date in a cost efficient manner.
- C. Transportation
1. Highway Access
The property should be located on or very close to an arterial street as defined by the local planning jurisdiction.
 2. Parking
The property should be located in an area where there is adequate parking for HHS staff
 3. Public Transportation
The property should be located within 2,500 feet walking distance to mass transit
 4. Pedestrian Traffic
The property should be accessible to pedestrians without major conflicts with vehicular and service traffic.
 5. Emergency Access
All occupied structures on the property should be accessible on all sides to emergency response vehicles and personnel.
 6. Service Access
The property should be accessible to service vehicles and have adequate loading docks to accommodate the needs of HHS mission
 7. Architectural and Transportation Barriers
The property should be accessible to persons with disabilities free of architectural and transportation barriers in accordance with the Americans with Disabilities Act and/or state or local regulations and laws.

- D. Neighborhood Amenities
 - 1. Eating Establishments
The property should in close proximity to eating establishments within a ___ minute walking distance.
 - 2. Shopping
The property should in close proximity to shopping facilities
 - 3. Postal Services
The property should in close proximity to postal services.
 - 4. Healthcare
The property should in close proximity to healthcare facilities
 - 5. Quality
The property should be located in a neighborhood that is well maintained and free of blight
 - 6. Other
- E. Ground Floor Space
 - 1. Offers providing ground space
- F. Energy
 - 1. Energy efficient construction, equipment and fixtures
The buildings on the property should be constructed to meet federal energy requirements in accordance with the Energy Policy Act of 1992
- G. Environmental Features
 - 1. Noise: *The site should not be in close proximity to sources of noise such as highways, power plants, and service areas.*
 - 2. Air and Water Quality: *The site should not be in close proximity to sources of air or water pollution.*
 - 3. Solid Waste Disposal: *Solid waste disposal services should be economically available to the site.*
 - 4. Hazardous Waste Contamination: *The site should be free of hazardous materials.*
 - 5. Historic Characteristics: *The historic and archeological features of the site should be considered.*
- H. Maintenance and Operations
 - 1. Building and Janitorial Services
The Offeror should provide adequate maintenance and janitorial services to maintain the property.
- I. Security
 - 1. Site Security
Lessor should provide an electronic key card perimeter security system during non-duty hours which should be monitored 24 hours per day and provide a level of security which reasonably deters unauthorized entry to the leased space. At the Government's expense, the Government retains the right to implement security requirements in accordance with the Vulnerability Assessment of Federal Facilities report of the U.S. Department of Justice, June 28, 1995 or other applicable Federal policy.
 - a. Grouping of Structures
The grouping of structures should reinforce associations of mutual benefit. There should be delineated paths of movement; there should be defined areas of

- activity for particular users through their juxtaposition with internal work areas, and provides for natural opportunities for visual surveillance. The grouping of buildings should promote a clear understanding of the function of the space*
- b. **Visibility of Streets and Open Space**
Streets and open spaces should be visible from the workspace within the property. Building entrances and lobbies should be visible from the street.
 - c. **Subdivision of the Site**
The site should be subdivided so that all of its areas relate to a particular building or group of buildings. The area surrounding a building should be perceived by occupants as an outdoor extension of their workspace. As such, it comes under their continued use and surveillance. Persons using those areas should feel they are under the natural observation of their co-workers.
 - d. **No Unassigned Areas**
No area should be unassigned or simply left “public”. Outdoor space should be allocated to specific buildings or building clusters.
 - e. **Boundaries**
Physical barriers or symbolic barriers should define the property’s boundaries. The barriers should separate public from semi-public areas of the property, provide transition from outdoors to indoors, divide the semi-public space of building lobby from the corridors.
 - f. **Physical Barriers**
The property should feature physical barriers such as fences, walls and berms that limit access to facilities by unauthorized persons. Certain areas such as maintenance yards, hazardous material storage, etc. will require fencing.
 - g. **Symbolic Barriers**
The property should feature symbolic barriers such as plants, low walls, doors, berms, change in level, and security desks that will discourages unauthorized entry by making distinctions between the occupants and the visitor. The use of symbolic barriers should not limit or block emergency access or access to emergency systems such as fire hydrants, electric disconnects switches, and gas shut-off valves.
 - h. **Surveillance**
The buildings and structures on the property should promote the ease of surveillance by staff and security personnel. The surveillance system should be obvious to make a potential intruder aware that any overt act or suspicious behavior will come under the scrutiny of the facility’s occupants.
2. **Current Tenants**
 - a. *The current tenants of the property should be engaged in lawful activities and not engaged in activities that are a threat to the security of the United States of America.*
 - b. *When leasing new space or renewing existing leases, consideration should be given to locating in a building with existing federal tenants with similar facility and security requirements.*

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LIST OF LEASING FORMS AND CLAUSES

1. Forms Section may consist of:
 - A. SF 2, U.S. Government Lease for Real Property or GSA Form 3626, U.S. Government Lease for Real Property (Short Form) or equivalent documents.¹
 - B. GSA Form 3516 or GSA Form 3516A, Solicitation Provisions.
 - C. GSA Form 3517A or GSA Form 3517B Required Clauses (Full Text).²
 - D. GSA Form 3518, Required Certifications and Representations, signed by Lessor.
 - E. GSA Form 1364, Proposal to Lease Space.
 - F. GSA Form 1217, Lessor's Annual Cost Statement.
 - G. GSA Form 3627, Market Survey

¹ The Contracting Officer must approve equivalent documents.

² The Contracting Officer must approve GSA Form 3517 Required Clauses by reference.