



MAR 11 2005

MEMORANDUM FOR F. JOSEPH MORAVEC  
COMMISSIONER  
PUBLIC BUILDINGS SERVICE

FROM: DAVID A. DRABKIN  
DEPUTY CHIEF ACQUISITION OFFICER  
OFFICE OF THE CHIEF ACQUISITION OFFICER

SUBJECT: Laws and Regulations Applicable to DOD Construction  
Contracts (DOD Construction Requirements Survey)

The Office of the Chief Acquisition Officer issued GSA Acquisition Letter V 04-05, Purchases on Behalf of Other Agencies, to all contracting activities on February 11, 2005. This acquisition letter directs GSA Contracting Officers to obtain information from the Requiring Agency concerning unique or agency specific restrictions applicable to the funds made available for the acquisition and associated with the requirement itself when awarding contracts and placing orders on behalf of other agencies.

This memorandum forwards information prepared by the Department of Defense (DOD) regarding their requirements for DOD construction contracts. DOD has identified a list of laws and regulations applicable to general DOD construction; however, this list may not be all inclusive as there may be statutory and regulatory requirements unique for a given project. Therefore, this list should be used as a framework to develop a more extensive knowledge of the legal and policy requirements, which may apply to DOD construction.

The attached list is to be used for information only. It does not satisfy the requirements set forth in the above reference acquisition letter. Contracting Officers are still required to adhere to the requirements in paragraph 7 (Policy) of the acquisition letter.

If there are any questions, please feel free to call Cecelia L. Davis of my staff on (202) 219-0202 or [cecelia.davis@gsa.gov](mailto:cecelia.davis@gsa.gov).

Attachment

## Laws and Regulations Applicable to DoD Construction Contracts

Primary DFARS Requirements	Description	Applicability
228 Bonds and Insurance (please see <a href="#">228.1</a> and <a href="#">228.3</a> for Bonds and Insurance)	General applicability to construction contracts.	
236 Construction and Architect-Engineer Contracts (please see subparts <a href="#">1</a> , <a href="#">2</a> , <a href="#">5</a> , <a href="#">6</a> and <a href="#">7</a> )	Policies and procedures for construction contracts.	
252.222-7000 Restrictions on Employment of Personnel (Mar 2000)	Requires contractors to employ, for the purposes of performing that portion of the contract work within the noncontiguous State, individuals that are residents of that noncontiguous State and possess or would be able to acquire promptly the necessary skills to perform the contract.	Construction and services contracts to be performed in whole or in part within a noncontiguous State when the unemployment rate in the noncontiguous State is in excess of the national average rate of unemployment as determined by the Secretary of Labor
252.225-7044 Balance of Payments Program- Construction Material  252.225-7045 Balance of Payments Program- Construction Material Under Trade Agreements  Alternate I of the Clause	Requires contractors to use only domestic construction material in performing the contract, except for construction material valued at or below the simplified acquisition threshold or when the construction material is otherwise exempted.	Solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but – <ul style="list-style-type: none"> <li>• Less than \$6,725,000 use <a href="#">252.225-7044</a></li> <li>• More than \$6,725,000 use <a href="#">252.225-7045</a></li> <li>• Between \$6,725,000 and \$7,611,532 use <a href="#">252.225-7045</a> with Alternate I</li> </ul>
252.236-7000 Modification Proposals—Price Breakdown (Dec 1991)	Requires contractors to furnish a timely, itemized price breakdown setting forth all costs, including material, labor, equipment, subcontracts, overhead and profit.	All fixed-price construction solicitations and contracts
252.236-7001 Contract Drawings and Specifications	Identifies Contractor responsibilities when contract drawings and specifications contain omissions or	All fixed-price construction solicitations and contracts

Although we have attempted to identify laws and regulations applicable to DoD construction contracting, please be advised the list may not be all inclusive. We recommend that GSA use this listing as a framework for developing a more extensive knowledge of the legal and policy requirements which may be pertinent to DoD construction contracting.

## Laws and Regulations Applicable to DoD Construction Contracts

<u>(Aug 2000)</u>	inaccurate descriptions of details of the work that are manifestly necessary to carry out the intent of the drawings and specifications.	
<b>Primary DFARS Requirements (Continued)</b>		
Requirement	Description	Applicability
<u>252.236-7002</u> Obstruction of Navigable Waterways (Dec 1991)	Requires the Contractor to promptly recover and remove any material, plant, machinery, or appliance which the Contractor loses, dumps, throws overboard, sinks, or misplaces, and which may be dangerous to or obstruct navigation and the consequences for failing to do so.	Fixed-price construction contracts and solicitations when the contract will involve work near or on navigable waterways.
<u>252.236-7003</u> Payment for Mobilization and Preparatory Work (Jan 1997)	Establishes what the Government will pay for mobilization and preparatory work and the requirements for payment requests.	Fixed-price construction contracts and solicitations when the HCA has approved use of a separate bid item for mobilization and preparatory work.
<u>252.236-7004</u> Payment for Mobilization and Demobilization (Dec 1991)	Establishes what the Government will pay for mobilization and preparatory work and the requirements for payment requests.	Fixed-price construction contracts and solicitations when the HCA has approved use of a separate bid item for mobilization and preparatory work.
<u>252.236-7005</u> Airfield Safety Precautions (Dec 1991)	Provides specific instructions to Contractors for airfield safety precautions, e.g. not permit personnel to use any runway for purposes other than aircraft operation, keep all paved surfaces clean and free from small stones, etc.	Fixed-price construction contracts and solicitations when construction will be performed on or near airfields.
<u>252.236-7006</u> Cost Limitation (Jan 1997)	Requires offers to separately price items to be considered responsive and notifies offerors potential basis for rejection of offers.	Fixed-price construction contracts and solicitations subject to statutory cost limitations

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Primary DFARS Requirements (Continued)		
Requirement	Description	Applicability
<u>252.236-7007 Additive or Deductive Items (Dec 1991)</u>	Notifies prospective offerors that the low offeror will be the offeror that is otherwise eligible for award and offers the lowest aggregate amount for the first or base bid item, plus or minus those additive or deductive items that provide the most features within the funds determined available.	Fixed-price construction contracts and solicitations if the procedures in 236.213-70 are being used.
<u>252.236-7008 Contract Prices—Bidding Schedules (Dec 1991)</u>	Requires the Contractor to include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.	Fixed-price construction contracts and solicitations if the contract will contain only unit prices for some items.
<u>252.236-7009 Option for Supervision and Inspection Services (Dec 1991)</u>	Notifies the Contractor that the Government may direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract.	Fixed-price solicitations and contracts for A-E services.
<u>252.236-7010 Overseas Military Construction-Preference for United States Firm (Jan 1997)</u>	Requires offerors to identify whether or not the offeror is a United States firm and notifies offerors that offerors from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.	Solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed \$1,000,000 when contract performance will be in a United States territory or possession in the Pacific or in a country bordering the Arabian Gulf.

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Primary DFARS Requirements (Continued)		
Requirement	Description	Applicability
<p><u>252.236-7011 Overseas Architect-Engineer Services—Restriction to United States Firms (Jan 1997)</u></p>	<p>Notifies contractor that the military construction appropriations acts restrict contract award to a United States firm or a joint venture of United States and host nation firms.</p>	<p>Solicitations for A-E contracts that are funded with military construction appropriations, estimated to exceed \$500K and performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf.</p>
<p><u>252.236-7012 Military Construction on Kwajalein Atoll-Evaluation Preference (Mar 1998)</u></p>	<p>Requires offerors to identify whether or not the offeror is a Marshallese firm or United States firm and notifies offerors that offerors from firms that do not qualify as Marshallese firms or United States firms will be evaluated by adding 20 percent to the offer unless application of the factor would not result in award to a United States firm.</p>	<p>Solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed \$1,000,000 when contract performance will be on Kwajalein Atoll</p>
<p><u>252.246-7002 Warranty of Construction (Germany) (Jun 1997)</u></p>	<p>Requires the Contractor to warrant that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.</p>	<p>Solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.</p>
<p><b>Related DFARS Requirements</b></p>		
<p><u>252.216-7000 Economic Price Adjustment-Basis Steel, Aluminum, Brass, Bronze, or Copper Mill Products (Jul 1997)</u></p>	<p>Provides the procedures and restrictions for the related Economic Price Adjustments (EPA)</p>	<p>May be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.</p>

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<b>Related DFARS Requirements (Continued)</b>		
<b>Requirement</b>	<b>Description</b>	<b>Applicability</b>
<p><u>252.216-7001 Economic Price Adjustment-Nonstandard Steel Items (Jul 1997)</u></p>	<p>Provides the procedures and restrictions for the related Economic Price Adjustments (EPA)</p>	<p>May be used in fixed-price supply contracts when the contractor is a steel producer and actually manufactures the standard steel mill item and the items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.</p>
<p><u>252.225-7014 Preference for Domestic Specialty Metals (Apr 2003)</u></p>	<p>Requires any specialty metals incorporated in articles delivered under this contract to be melted in the United States, its possessions, or Puerto Rico.</p>	<p>Solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals.</p>
<p><u>252.239-7011 Special Construction and Equipment Charges (Dec 1991)</u></p>	<p>Identifies the procedures and limits for the Contractor and Government responsibilities to pay for the cost of constructing any facilities or providing equipment.</p>	<p>Solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction.</p>
<p><b>DoD Unique Statutory Requirements</b></p>		
<p>Title 10 Authority (General)</p>	<p>Defines the term "military construction."</p>	<p>Title 10 breaks down MILCON into subcategories: Emergency Construction, Contingency Construction, Unspecified Minor Construction, NATO, A-E Services for Const, War Time Authorities, in addition to a major Sub-Chapter on Military Family Housing. Title also Defines NAVFAC and ACOE as sole Construction agents for all Military Construction (MILCON) and all DoD construction requiring oversight.</p>

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<b>DoD Unique Statutory Requirements (Continued)</b>		
<b>Requirement</b>	<b>Description</b>	<b>Applicability</b>
<p><u>§ 2851. Supervision of Military Construction Projects</u>            10USC169 - MILCON + Military Family Housing (see attachment 10C169)            10USC159- Real Property; Related Personal Property; and Lease of Non-excess Property (see attachment 10C159)            10USC160 - Environmental Restoration (see attachment 10C160)            10USC147- Commissaries + Exchanges + Other MWR Activities (see attachment 10C147)</p>	<p>Requires the contract to be carried out under the direction and supervision of the appropriate Secretary (e.g., Secretary of Defense, Secretary of the Army, etc.) and requires military construction projects financed from appropriations for military functions of the Department of Defense to be accomplished by or through a military department designated by the Secretary of Defense.</p>	<p>Any contract in connection with a military construction project or a military family housing project</p>
<p><u>10 USC 2805, Unspecified Minor Construction</u></p>	<p>Pre-award reporting requirements to Congressional committees and continuing interaction with Congressional Committees.</p>	<p>MILCON projects with a cost between \$750K and \$1.5M.</p>
<p><u>10 USC 2807, Architectural And Engineering Services And Construction Design</u></p>	<p>Annual and intermittent notification to Congressional Committees.</p>	<p>MILCON projects that will be designed by an A-E firm where the total design contract award will exceed \$1M.</p>
<p><u>10 USC 2808, Construction Authority In The Event Of A Declaration Of War Or National Emergency</u></p>	<p>Pre-award notification to Congressional Committees.</p>	<p>Emergent MILCON projects required to support a war effort or national emergency.</p>

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<b>DoD Unique Statutory Requirements (Continued)</b>		
<b>Requirement</b>	<b>Description</b>	<b>Applicability</b>
<u>10 USC 2811, Repair of Facilities</u>	Pre-award notification to Congressional Committees.	Emergent repair projects exceeding \$7.5M.
<u>10 USC 2813, Acquisition Of Facilities in Lieu of Authorized Construction</u>	Pre-award notification to Congressional Committees.	Decision to acquire a facility by purchase instead of construction.
<u>10 USC 2853, Authorized Cost Variations</u>	Notification to Congressional Committees.	When the cost of a project will exceed 25 percent of the authorized project amount.
MILCON Appropriations Report Language for Reprogramming of MILCON Funds Between Projects	Notification to the MILCON Appropriations sub-committees.	When a project will have a cost increase that exceeds the lesser of \$2M or 25% of the appropriated amount.
<u>10 USC 2854, Restoration or Replacement Of Damaged Or Destroyed Facilities</u>	Pre-award notification to Congressional Committees.	Construction contract to repair or replace a facility when the cost will exceed \$750K.
HAC Report 104-137 in the 1996 MILCON Act. & OSD Memo dtd 6 Feb 1996, sub: Semi-Annual Submission of Military Construction Audit Trail Documents	Provide audit trail documents reporting the current status of on-going construction projects and line items in the MILCON, FHCON, and BRAC programs on a semi-annual basis.	MILCON, FHCON, and BRAC programs.

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<b>Requirement</b>	<b>Description</b>	<b>Applicability</b>
10 U.S.C. 2802	Requires projects to include planning, supervision, inspection, and overhead incident to the project.	MILCON projects
P.L. 108-324 FY05 MILCON Appr. Act (any year)	Authorizes construction personnel support from NAVFAC/ACOE for the purposes of this appropriation.	MILCON projects
P.L. 108-324 Sec.116 FY05 MILCON Appr. Act (any year)	Permits NAVFAC/ACOE to use of expired funds.	SIOH, P&D, and on subsequent claims
<b>Other DoD Unique Requirements</b>		
FMR Vol. 3, Chapter 5, Pages 5-1 thru 5-4	Requirement for project-by-project approval of appropriation document (SD 460).	Funds release and project approval to proceed with projects deferred by OSD COMPT

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