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Parent topic: Defense Federal Acquisition Regulation

Subpart 236.1 - GENERAL

236.102 Definitions.

“Construction activity” means an activity at any organizational level of the DoD that—

(1) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and

(2) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

“Marshallese firm” is defined in the provision at 252.236-7012 , Military Construction on Kwajalein Atoll—Evaluation Preference.

“United States firm” is defined in the provisions at 252.236-7010 , Overseas Military Construction—Preference for United States Firms, and 252.236-7011 , Overseas Architect-Engineer Services—Restriction to United States Firms.

Subpart 236.2 - SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

236.203 Government estimate of construction costs.

Follow the procedures at PGI 236.203 for handling the Government estimate of construction costs.

236.204 Disclosure of the magnitude of construction projects.

Additional price ranges are—

(i) Between $10,000,000 and $25,000,000;

(ii) Between $25,000,000 and $100,000,000;

(iii) Between $100,000,000 and $250,000,000;

(iv) Between $250,000,000 and $500,000,000; and

(v) Over $500,000,000.

236.206 Liquidated damages.

See 211.503 for instructions on use of liquidated damages.

236.211 Distribution of advance notices and solicitations.

See PGI 236.211 Special situations. for instructions on reporting data for definitization of requests for equitable adjustment.

236.213 Special procedures for sealed bidding in construction contracting.

If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with additive or deductive items in accordance with PGI 236.213 .

236.215 Special procedures for cost-reimbursement contracts for construction.

For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301-3 .

236.270 Expediting construction contracts.

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be redelegated. The approval authority must—

(1) Certify that the additional expenditures are necessary to protect the National interest; and

(2) Establish a reasonable completion date for the project.

(b) The contracting officer may approve an expedited completion date if no additional costs are

involved.

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306 (c)). See also 216.301-3 regarding the prohibition against the use of certain cost-reimbursement contracts in connection with a military construction project or military family housing project.

236.272 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification—

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR 19.6, if the small business is in line for award and is found nonresponsible.

236.273 Construction in foreign countries.

(a) In accordance with section 112 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2015 (Division I of Pub. L. 113-235) and the same provision in subsequent military construction appropriations acts, military construction contracts funded with military construction appropriations, that are estimated to exceed $1,000,000 and are to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf (i.e., Iran, Oman, United Arab Emirates, Saudi Arabia, Qatar, Bahrain, Kuwait, and Iraq), shall be awarded only to United States firms, unless—

(1) The lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent; or

(2) The contract is for military construction on Kwajalein Atoll and the lowest responsive and responsible offer is submitted by a Marshallese firm.

(b) See PGI 236.273 (b) for guidance on technical working agreements with foreign governments.

236.274 Restriction on acquisition of steel for use in military construction projects.

In accordance with section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009 (Pub. L. 110-329, Division E) and the same provision in subsequent military construction appropriations acts, do not acquire, or allow a contractor to acquire, steel for any construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete for such acquisition of steel.

236.275 Construction of industrial resources.

See Subpart 237.75 for policy relating to facilities projects.

Subpart 236.3 - TWO-PHASE DESIGN-BUILD SELECTION PROCEDURES

236.303 RESERVED

236.303-1 Phase One.

(a)(4) In lieu of the limitations on the maximum number of offerors that may be selected to submit phase-two proposals at FAR 36.303-1(a)(4), for DoD—

(i) If the contract value exceeds $5.5 million, the maximum number of offerors specified in the solicitation that are to be selected to submit phase-two proposals shall not exceed five, unless—

(A) The solicitation is issued for an indefinite-delivery indefinite-quantity contract for design-build construction; or

(B) The head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer’s decision with respect to an individual solicitation, that a maximum number greater than five is in the best interest of the Government and is consistent with the purposes and objectives of the two-phase selection procedures. The decision shall be documented in the contract file (U.S.C. 3241(d)).

(ii) If the contract value is at or below $5.5 million, the maximum number of offerors specified in the solicitation that are to be selected to submit phase-two proposals is at the discretion of the contracting officer.

Subpart 236.4 - Reserved

Subpart 236.5 - CONTRACT CLAUSES

236.570 Additional provisions and clauses.

(a) Use the following clauses in all fixed-price construction solicitations and contracts -

(1) 252.236-7000, Modification Proposals-Price Breakdown; and

(2) 252.236-7001, Contract Drawings and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable -

(1) 252.236-7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, use either -

(i) 252.236-7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require -

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236-7004, Payment for Mobilization and Demobilization. Use this clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236-7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236-7006, Cost Limitation, if the solicitation's bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted (FAR 36.205).

(5) 252.236-7007, Additive or Deductive Items, if the procedures in 236.213 are being used.

(6) 252.236-7008, Contract Prices - Bidding Schedule, if the contract will contain only unit prices for some items.

(c) Use the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) 252.236-7010, Overseas Military Construction - Preference for United States Firms, when contract performance will be in a United States outlying area in the Pacific or in a country bordering the Arabian Gulf.

(2) 252.236-7012, Military Construction on Kwajalein Atoll - Evaluation Preference, when contract performance will be on Kwajalein Atoll.

(d) Use the clause at 252.236-7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers, in solicitations and contracts that -

(1) Use funds appropriated for military construction); and

(2) May require the acquisition of steel as a construction material.

(e) Also see 246.710(4) for an additional clause applicable to construction contracts to be performed in Germany.

Subpart 236.6 - ARCHITECT-ENGINEER SERVICES

236.601 Policy.

(1) Written notification to the congressional defense committees is required if the total estimated contract price for architect-engineer services or construction design, in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities, exceeds $1.5 million. In accordance with 10 U.S.C. 480, unclassified notifications must be provided by electronic medium.

(i) For military construction or military family housing (10 U.S.C. 2807(b)), the notification—

(A) Must include the scope of the project and the estimated contract price; and

(B)*(1)* If provided by electronic medium, must be provided at least 14 days before the initial obligation of funds; or

(2) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(ii) For restoration or replacement of damaged or destroyed facilities (10 U.S.C. 2854(b)), the notification—

(A) Must include the justification for the project, the estimated contract price, and the source of the funds for the project; and

(B)*(1)* If provided by electronic medium, must be provided at least 7 days before the initial obligation of funds; or

(2) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(2) During the applicable notice period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602-1 Selection criteria.

(a) Establish the evaluation criteria before making the public announcement required by FAR 5.205(d) and include the criteria and their relative order of importance in the announcement. Follow the procedures at 236.602-1 (a).

236.602-70 Restriction on award of overseas architect-engineer contracts to foreign firms.

In accordance with section 111 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2015 (Division I of Pub. L. 113-235) and the same provision in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf (i.e., Iran, Oman, United Arab Emirates, Saudi Arabia, Qatar, Bahrain, Kuwait, and Iraq), shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

236.604 Performance evaluation.

Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the architect-engineer contractor’s performance.

236.606 Negotiations.

236.606-70 Statutory fee limitation.

(a) The statutes at10 U.S.C. 7540, 8612, and 9540, for the Departments of the Army, Navy, and Air Force, respectively, limit the contract price (or fee) for architect-engineer services for the preparation of designs, plans, drawings, and specifications to 10 percent of the project's estimated construction cost.

(b) The 10 percent limit also applies to contract modifications, including modifications involving—

(1) Work not initially included in the contract; apply the 10 percent limit to the revised total estimated construction cost; and

(2) Redesign work; apply the 10 percent limit by—

(i) Adding the estimated construction cost of the redesign features to the original estimated

construction cost;

(ii) Adding the contract cost for the original design to the contract cost for redesign; and

(iii) Dividing the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the 10 percent statutory limitation.

(c) The 10 percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the 10 percent limit.

236.609 Contract clauses.

236.609-70 Additional provision.

Use the provision at 252.236-7011 , Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for architect-engineer contracts that are—

(1) Funded with military construction appropriations;

(2) Estimated to exceed $500,000; and

(3) To be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

Subpart 236.7 - STANDARD AND OPTIONAL FORMS FOR CONTRACTING FOR CONSTRUCTION, ARCHITECT-ENGINEER SERVICES, AND DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Do not use Optional Form 347, Order for Supplies or Services (see 213.307).