PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

Source: 53 FR 26175, July 11, 1988, unless otherwise noted.

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Parent topic: SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Subpart 636.1—General

636.101 Applicability.

636.101-70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be excepted where necessary from the provisions of the FAR (48 CFR Chapter 1) under the authority of section 3 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 294). The Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations is authorized to approve such exceptions.

636.104 Policy.

636.104-70 Foreign Service Buildings Act of 1926, as amended.

(a) *Policy.* Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302) limits competition for the construction, alteration, or repair of buildings or grounds abroad exceeding $5 million to:

(1) American-owned firms; or

(2) Firms from countries which permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) *Limitation.* This participation may be permitted by or limited to:

(1) Host-country firms where required by international agreement; or

(2) By the laws of the host country; or

(3) Where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

(c) *Evaluation preference.* For purposes of determining competitive status, American-owned firms shall receive a ten (10) percent price preference reduction, provided that two prospective responsible bidders/offerors submit a bid/offer.

636.104-71 Omnibus Diplomatic Security and Antiterrorism Act.

(a) *Preference for United States contractors.* The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399; 22 U.S.C. 4852) limits certain construction projects abroad to United States persons or qualified United States joint venture persons. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 applies to the following, as determined by the Assistant Secretary for Diplomatic Security:

(1) Diplomatic construction or design projects abroad exceeding $10 million; or,

(2) Diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology.

(b) *Exception.* This preference shall not apply with respect to any diplomatic construction or design

project in a foreign country whose statutes prohibit the use of United States contractors on such projects.

(c) *Subcontracting limitation.* With respect to a diplomatic construction project, a prime contractor may not subcontract more than 50 percent of the total value of the contract for that project.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) The contracting officer shall insert the clause at 652.236–70, Additional Safety Measures in all solicitations and contracts that include FAR 52.236–13, Accident Prevention, Alternate I, *i.e.:*

(1) When a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold and the contract will involve work of a long duration or hazardous nature; or

(2) When a contract for services to be performed at Government facilities (see FAR part 37) is contemplated, and technical representatives advise that special precautions are appropriate, such as contracts for building maintenance, building operations or infrastructure repair.

(b) The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (a) of the clause, or if the contracting officer has any questions regarding safety issues.

636.570 Additional DOSAR provisions.

(a) The contracting officer shall insert the provision at 652.236–71, Foreign Service Buildings Act, As Amended, in all contracts exceeding $5,000,000 for the construction, alteration, or repair of buildings and grounds overseas, unless:

(1) An international agreement with or laws of the host country government permits or limits the participation to host-country firms; or,

(2) The Secretary of State determines that it is necessary to the interest of bilateral relations or to carry out the project to either permit or limit the participation to host-country firms; or,

(3) The provision at 652.236–72 applies.

(b) The contracting officer shall insert the provision at 652.236–72, Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act, in all diplomatic construction or design solicitations exceeding $10 million; or, diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology, as determined by the Assistant Secretary of Diplomatic Security.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602-1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602–1(b).

636.602-4 Selection authority.

(a) For acquisitions conducted by A/LM/AQM on behalf of the Bureau of Overseas Buildings Operations, the final selection decision shall be made by the Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations, with the concurrence of the contracting officer and L/BA. For other domestic acquisitions, the selection decision shall be made by an individual designated by the Assistant Secretary of State for Administration. For acquisitions conducted by overseas posts, the selection decision shall be made by the contracting officer."

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

The short selection process described in FAR 36.602–5 is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

636.606 Negotiations.

(a) Contracting officers at overseas posts may request a waiver from A/OPE if the contracting officer is unable to negotiate a fee within the six percent limitation. See 615.404–4(c)(4)(i)(B)."