



ACQUISITION  
AND SUSTAINMENT

**OFFICE OF THE ASSISTANT SECRETARY OF WAR**

**3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000**

In reply refer to

DARS Tracking Number: 2026-O0019

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Revolutionary Federal Acquisition Regulation (FAR) Overhaul  
Part 36, Defense FAR Supplement (DFARS) Part 236

Effective February 1, 2026, contracting officers shall use—

- The revised FAR Part 36, Construction and Architect-Engineer Contracts published on the Revolutionary FAR Overhaul web page at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-36> in lieu of the text codified at 48 CFR chapter 1 (<https://www.ecfr.gov>).
- The attached DFARS Part 236, Construction and Architect-Engineer Contracts in lieu of the text codified at 48 CFR chapter 2; and
- The attached DFARS Procedures, Guidance, and Information (PGI) 236, Construction and Architect-Engineer Contracts in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

This class deviation implements the following:

- Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR “should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

- Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
- The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfarss@mail.mil.

John M. Tenaglia  
Principal Director,  
Defense Pricing, Contracting, and  
Acquisition Policy

Attachments:  
As stated

## **PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

### **SUBPART 236.0—GENERAL**

#### **236.001 Definitions.**

As used in this part—

*Marshallese firm* means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that—

- (i) Is more than 50 percent owned by citizens of the Marshall Islands; or
- (ii) Complies with the following:
  - (A) The firm has continuously operated in the Marshall Islands at least 3 years before the solicitation date;
  - (B) Most of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and
  - (C) Most of the operating equipment and physical plant are in the Marshall Islands.

*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.

#### **236.002 Policy.**

See Part 237 for policy relating to facilities projects.

### **SUBPART 236.1—PRE-SOLICITATION**

#### **236.101 Construction**

##### **236.101-1 Acquisition Strategy**

- (1) For contracts in connection with a military construction project or military family housing project, see the prohibition at [216.301-3](#).
- (2) If funding may not be available for all of the desired construction features, consider using a bid schedule with additive or deductive items in accordance with [PGI 236.101-1](#).
- (3) Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see [216.304-2](#)). 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.
- (4) 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.

**236.101-2 Use of two-phase design-build selection procedures.**

(a)(4) In lieu of the limitations on the maximum number of offerors that may be selected to submit phase-two proposals at FAR 36.101-2(b)(4), for DoD—

(i) If the contract value exceeds \$5.5 million, the solicitation must limit phase-two proposals to no more than five offerors, 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 must be documented in the contract file (10 U.S.C. 3241(d)).

(ii) If the contract value is at or below \$5.5 million, the solicitation must specify the maximum number of offerors allowed to submit phase-two proposals, based upon the contracting officer's discretion.

**236.101-4 Advance notices and solicitations.**

See [PGI 236.101-4](#) for instructions on reporting data for definitization of requests for equitable adjustment.

**236.101-5 Liquidated damages.**

See 211.4 for instructions on use of liquidated damages.

**236.101-6 Government cost estimate.**

Follow the procedures at [PGI 236.101-6](#) for handling the Government estimate of construction costs.

**236.101-70 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.

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(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.

### **236.101-71 Clauses.**

(a) Insert 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) Insert 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, insert 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.

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(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 236.101-1(2) are being used.

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

(c) Insert 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) Insert 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) When performing construction contracts in Germany, also insert the clause prescribed at [246.710\(4\)](#).

## **236.102 Architect-Engineer Services**

### **236.102-3 Government cost estimate.**

See 236.101-6.

### **236.102-470 Clauses.**

Insert the provision at [252.236-7011](#), Overseas Architect-Engineer Services--Restriction to United States Firms, in solicitations for architect-engineer contracts that are—

- (a) Funded with military construction appropriations;
- (b) Estimated to exceed \$500,000; and
- (c) To be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

**236.102-570 Notice.**

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. See PGI 236.102-70.

- (a) For military construction or military family housing (10 U.S.C. 2807(b)), the notification—
  - (1) Must include the scope of the project and the estimated contract price; and
  - (2)(i) If provided by electronic medium, must be provided at least 14 days before the initial obligation of funds; or
    - (ii) 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.
- (b) For restoration or replacement of damaged or destroyed facilities (10 U.S.C. 2854(b)), the notification—
  - (1) Must include the justification for the project, the estimated contract price, and the source of the funds for the project; and
  - (2)(i) If provided by electronic medium, must be provided at least 7 days before the initial obligation of funds; or
    - (ii) 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.

**SUBPART 236.2—EVALUATION AND AWARD****236.201 Construction.****236.201-170 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), must 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 236.201-170](#)(b) for guidance on technical working agreements with foreign governments.

## **236.202 Architect and engineering services.**

### **236.202-1 Evaluation**

See PGI 236.202-1 for additional guidance on the development of architect-engineer services evaluation criteria.

### **236.202-370 Award**

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), must be awarded only to United States firms or to joint ventures of United States and host nation firms.

### **236.202-371 Statutory Fee Limitation**

(a) The statutes at 10 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. (See PGI 236.202-371).

(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.

### **SUBPART 236.3—POSTAWARD**

#### **236.370 Expediting construction contracts.**

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—

- (a) Certify that the additional expenditures are necessary to protect the National interest; and
- (b) Establish a reasonable completion date for the project.

#### **236.371 Architect-Engineer post construction evaluation.**

See PGI 236.371 for guidance on additional Architect-Engineer performance evaluations.

### **SUBPART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

##### **252.236-7000 Modification Proposals—Price Breakdown.**

As prescribed in [236.101-71\(a\)\(1\)](#), use the following clause:

#### **MODIFICATION PROPOSALS--PRICE BREAKDOWN (DEC 1991)**

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

- (iv) Subcontracts; and
- (v) Overhead; and

- (2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.
- (c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

**252.236-7001 Contract Drawings and Specifications.**

As prescribed in [236.101-71\(a\)\(2\)](#), use the following clause:

**CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)**

- (a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.
- (b) The Contractor shall—
  - (1) Check all drawings furnished immediately upon receipt;
  - (2) Compare all drawings and verify the figures before laying out the work;
  - (3) Promptly notify the Contracting Officer of any discrepancies;
  - (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
  - (5) Reproduce and print contract drawings and specifications as needed.
- (c) In general--
  - (1) Large-scale drawings shall govern small-scale drawings; and
  - (2) The Contractor shall follow figures marked on drawings in preference to scale measurements.
- (d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

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(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
		(End of clause)

**252.236-7002 Obstruction of Navigable Waterways.**

As prescribed in [236.101-71](#)(b)(1), use the following clause:

**OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)**

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 *et.seq.*).

(End of clause)

**252.236-7003 Payment for Mobilization and Preparatory Work.**

As prescribed in [236.101-71](#)(b)(2), use the following clause:

**PAYMENT FOR MOBILIZATION AND PREPARATORY WORK (JAN 1997)**

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. \_\_\_\_\_.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

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(1) For construction plant and equipment exceeding \$25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including received bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

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- (ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and
- (iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e)(1) Payments will continue to be made for item no. \_\_\_\_\_, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

**252.236-7004 Payment for Mobilization and Demobilization.**  
As prescribed in [236.101-71](#)(b)(2), use the following clause:

**PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)**

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) \_\_\_\_\_ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining \_\_\_\_\_ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a)(1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

- (i) Actual mobilization costs at completion of mobilization;
- (ii) Actual demobilization costs at completion of demobilization; and
- (iii) The remainder of this item in the final payment under this contract.

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(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

**252.236-7005 Airfield Safety Precautions.**

As prescribed in [236.101-71](#)(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

**AIRFIELD SAFETY PRECAUTIONS (DEC 1991)**

(a) *Definitions.* As used in this clause—

(1) “Landing areas” means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The “clear zone” beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) “Safety precaution areas” means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The “approach-departure clearance surface” is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

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(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The “approach-departure clearance zone” is the ground area under the approach-departure clearance surface.

(iii) The “transitional surface” is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(1) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(2) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The “transitional zone” is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) *General.*

(1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

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(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) *Landing areas.* The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) *Safety precaution areas.* The Contractor shall—

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(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

**252.236-7006 Cost Limitation.**

As prescribed in [236.101-71](#)(b)(4), use the following provision:

**COST LIMITATION (JAN 1997)**

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which—

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

**252.236-7007 Additive or Deductive Items.**

As prescribed in [236.101-71](#)(b)(5), use the following provision:

**ADDITIVE OR DEDUCTIVE ITEMS (DEC 1991)**

(a) The low offeror and the items to be awarded shall be determined as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that—

(i) Is otherwise eligible for award; and

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(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) *Example.* The amount available is \$100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000. Offeror B's base bid and four additives are \$80,000, \$16,000, \$9,000, \$7,000, and \$4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be \$99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed \$100,000.

(End of provision)

**252.236-7008 Contract Prices—Bidding Schedules.**  
As prescribed in [236.101-71](#)(b)(6), use the following provision:

**CONTRACT PRICES--BIDDING SCHEDULES (DEC 1991)**

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for—

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall 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.

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(End of provision)

**252.236-7009 Reserved.**

**252.236-7010 Overseas Military Construction–Preference for United States Firms.**

As prescribed in [236.101-71](#)(c)(1), use the following provision:

OVERSEAS MILITARY CONSTRUCTION--PREFERENCE FOR  
UNITED STATES FIRMS (JAN 1997)

(a) *Definition.* “United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (1) The corporate headquarters are in the United States;
- (2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
- (3) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) *Status.* The offeror \_\_\_\_\_ is, \_\_\_\_\_ is not a United States firm.

(End of provision)

**252.236-7011 Overseas Architect-Engineer Services–Restriction to United States Firms.**

As prescribed in [236.102-470](#), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES--RESTRICTION TO  
UNITED STATES FIRMS (JAN 1997)

(a) *Definition.* “United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (1) The corporate headquarters are in the United States;
- (2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
- (3) The firm employs United States citizens in key management positions.

(b) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) *Status*. The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

**252.236-7012 Military Construction on Kwajalein Atoll—Evaluation Preference.**

As prescribed in 236.101-71(c)(2), use the following provision:

**MILITARY CONSTRUCTION ON KWAJALEIN ATOLL--EVALUATION PREFERENCE (MAR 1998)**

(a) *Definitions*. As used in this provision—

(1) “Marshalllese firm” means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that—

- (i) Is more than 50 percent owned by citizens of the Marshall Islands; or
- (ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm’s directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) “United States firm” means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
- (iii) The firm employs United States citizens in key management positions.

(b) *Evaluation*. Offers from firms that do not qualify as United States firms or Marshalllese 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.

(c) *Status*. The offeror is \_\_\_\_\_ a United States firm; \_\_\_\_\_ a Marshalllese firm; \_\_\_\_\_ Other.

(End of provision)

**252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.**

As prescribed in [236.101-71\(d\)](#), use the following clause:

**REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS (JAN 2023)**

- (a) *Definition.* “Construction material,” as used in this clause, means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.
- (b) The Contractor shall provide American steel producers, fabricators, and manufacturers the opportunity to compete when acquiring steel as a construction material (e.g., steel beams, rods, cables, plates).
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial products.

(End of clause)

## **PGI 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

### **PGI 236.1—PRE-SOLICITATION**

#### **PGI 236.101 Construction.**

##### **PGI 236.101-1 Acquisition Strategy.**

(b)(1)(70) *Definition:* “lump sum” means a single payment of money, as opposed to a series of payments made over time.

(i) An example of a line item with lump sum pricing in accordance with DFARS part 204 is as follows:

ITEM NO.	SUPPLIES/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Repave runway 4 at Joint Base Andrews Firm Fixed Price PSC: Z1BD ACRN: AA	1	Job	\$1,501,866.08	\$1,501,866.08

Note that payment would occur upon completion and acceptance of the entire effort. Progress payments based on estimates of the percentage of completion (see FAR 52.232-5—Payments Under Fixed-Price Construction Contracts) could occur prior to that point.

(ii) An example of a line item with unit pricing in accordance with DFARS part 204 is as follows:

ITEM NO.	SUPPLIES/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Repave runway 4 at Joint Base Andrews Firm Fixed Price PSC: Z1BD ACRN: AA	525,128	Square Foot	\$2.86	\$1,501,866.08

Note that this allows the contractor to invoice for completed quantities of work, in accordance with FAR 32.102 (d), as those are accepted. Progress payments based on estimates of the percentage of completion (see FAR 52.232-5—Payments Under Fixed-Price Construction Contracts) could also occur prior to that point.

(2) For additive or deductive items—

(A) Use a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

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(2) A list of priorities that contains one or more additive or deductive bid items that progressively add or omit specified features of the work in a stated order of priority. (Normally, do not mix additive and deductive bid items in the same solicitation.)

(B) Before opening the bids, record in the contract file the amount of funds available for the project.

(C) Determine the low bidder and the items to be awarded in accordance with the procedures in the clause at [252.236-7007](#), Additive or Deductive Items.

**PGI 236.101-4—Advance notices and solicitations.**

(b)(1) The contracting officer shall report data on the timelines for definitization of all requests for equitable adjustment (REAs) for change orders received from contractors under construction contracts. The contracting officer shall report this data using the PALT/Protest/REA Tracker module in the Procurement Integrated Enterprise Environment at <https://piee.eb.mil> within 10 business days of definitization. Data to be reported includes—

- (A) The contract number against which the REA was submitted;
- (B) The contractor that submitted the REA;
- (C) Date of receipt of the REA; and
- (D) Date of definitization of the REA and contract modification number.

(2) Individually reported records will be aggregated by the PALT/Protest/REA Tracker module. The PALT/Protest/REA Tracker module will aggregate the timelines for the definitization of REAs for change orders under construction contracts. Contracting officers shall attach the aggregate results for the military department or defense agency to solicitations in accordance with FAR 36.101-4. See PGI 205.103-70) for further instructions regarding the solicitation notice.

**PGI 236.101-6 Government cost estimate.**

(1) Designate the Government estimate as “CUI” (see <https://www.dodcui.mil/>) unless the information is classified. If it is, handle the estimate in accordance with security regulations.

(2) For sealed bid acquisitions—

(i) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(ii) After the bids are read and recorded, remove the “CUI” marking (see <https://www.dodcui.mil/>) and read and record the estimate as if it were a bid, in the same detail as the bids.

**PGI 236.102-70 Notice.**

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

## **PGI 236.2—EVALUATION AND AWARD**

### **PGI 236.201 Construction.**

#### **PGI 236.201-170 Construction in foreign countries.**

(b) When a technical working agreement with a foreign government is required for a construction contract—

(i) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command, to participate in the negotiations.

(ii) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

- (A) Acquisition of all necessary rights;
- (B) Expeditious, duty-free importation of labor, material, and equipment;
- (C) Payment of taxes applicable to contractors, personnel, materials, and equipment;
- (D) Applicability of workers' compensation and other labor laws to citizens of the United States, the host country, and other countries;
- (E) Provision of utility services;
- (F) Disposition of surplus materials and equipment;
- (G) Handling of claims and litigation; and
- (H) Resolution of any other foreseeable problems that can be appropriately included in the agreement.

### **PGI 236.202 Architect and engineering services.**

#### **PGI 236.202-1 Evaluation.**

The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY \_\_ Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(a) Use performance evaluation data from the Contractor Performance Assessment Report System (CPARS).

(b) The primary factor in architect-engineer contractor selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

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(1) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among architect-engineer firms, include small business concerns; historically black colleges and universities and minority institutions; firms that have not had prior DoD contracts; and small disadvantaged business concerns and joint ventures with small disadvantaged business participants if the North American Industry Classification System (NAICS) Industry Subsector of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(i) Use data extracted from the Federal Procurement Data System (FPDS).

(ii) Do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition.

(2) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

(3) Consider the extent to which potential contractors identify and commit to small business, to small disadvantaged business (SDB) if the NAICS Industry Subsector of the subcontracted effort is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)), and to historically black college or university and minority institution performance as subcontractors.

#### **PGI 236.202-371 Statutory Fee Limitation.**

This fee limitation applies only to Departments of the Army, Navy, and Air Force requirements (e.g., if the Department of the Army awards a contract for the Defense Logistics Agency or the Department of the Interior, this fee limitation does not apply). See FAR 15.404-9(c)(4)(ii) for the fee limitation that applies to other DoD components and civilian agencies.

#### **PGI 236.3 POSTAWARD**

##### **PGI 236.371 Architect-Engineer post construction evaluation.**

In addition to the requirements at FAR 42.1102(f), prepare a separate performance evaluation after actual construction of the project. The evaluating official should be the person most familiar with the architect-engineer contractor's performance.