

Subchapter F—Special Categories of Contracting

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

65. Section 636.101–70 is revised to read as follows:

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.

66. Sections 636.104, 636.104–70 and 636.104–71, are added to read as follows:

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 (Pub. L. 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.

67. Section 636.202 is added to read as follows:

636.202 Specifications.

(d) The Director/Chief Operating Officer of the Bureau of Overseas Building Operations is the head of the agency for the purposes of FAR 36.202(d)(3) and (4).

68. Section 636.513 is amended by adding the following sentence to the end of paragraph (a):

636.513 Accident prevention.

(a) * * * The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (4) of the clause, or if the contracting officer has any questions regarding construction safety issues.

69. Section 636.570 is added to read as follows:

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 DOSAR 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.

70. Section 636.602–4 is removed.

PART 637—SERVICE CONTRACTING

71. Section 637.102, and section 637.102–70 are added to read as follows:

637.102 Policy.

637.102–70 Special requirements for the acquisition of local guard services overseas.

(a) *Policy.* Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864) encourages the participation of United States persons and qualified United States joint venture persons in local guard contracts overseas under diplomatic security programs.

(b) *Evaluation preference.* For purposes of determining competitive status, proposals of United States persons and qualified United States joint venture persons shall receive a ten (10) percent price preference reduction.

72. Section 637.104–70 is amended by removing the words “Office of Foreign Buildings” and inserting the words “Bureau of Overseas Buildings Operations” in their place, and by removing the words “and the Moscow Embassy Buildings Control Office” in paragraph (f).

73. Section 637.110 is amended by adding a new paragraph (d) to read as follows:

637.110 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the provision at 652.237–73, Statement of Qualifications for Preference as a U.S. Person, in all overseas local guard solicitations.

74. A new Subpart 637.6, consisting of section 637.601, is added to read as follows:

Subpart 637.6—Performance-Based Contracting

637.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy shall be fully justified in writing and approved by the Departmental Competition Advocate.