

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### Subpart 836.2—Special Aspects of Contracting for Construction

Sec.

- 836.202 Specifications.
- 836.204 Disclosure of the magnitude of construction projects.
- 836.206 Liquidated damages.
- 836.208 Concurrent performance of firm fixed-price and other types of construction contracts.
- 836.209 Construction contracts with architect-engineer firms.
- 836.211 Distribution of advance notices and solicitations.

#### Subpart 836.3—Special Aspects of Sealed Bidding in Construction Contracting

- 836.371 Notice to proceed.

#### Subpart 836.5—Contract Clauses

- 836.513 Accident prevention.

#### Subpart 836.6—Architect-Engineer Services

- 836.602 Selection of firms for architect-engineer contracts.
  - 836.602-1 Selection criteria.
  - 836.602-2 Evaluation boards.
  - 836.602-4 Selection authority.
  - 836.602-5 Procedure for procurements estimated not to exceed the Simplified Acquisition Threshold.
- 836.606-70 General.
- 836.606-71 Architect-engineer's proposal.
- 836.606-72 Contract price.
- 836.606-73 Application of 6-percent architect-engineer fee limitation.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12618, Mar. 29, 1984, unless otherwise noted.

#### Subpart 836.2—Special Aspects of Contracting for Construction

##### 836.202 Specifications.

(a) The procedures described in part 811 shall be applicable to construction specifications.

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer

during the design stage. The contracting officer shall inform the prospective architect-engineers of this requirement during the negotiation phase, prior to award of contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and VA will not allow the submission of "equal" products, the bidders must be placed on notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236.5 and any other provision which may authorize the submission of an "equal" product, will not apply. In order to properly alert bidders to this requirement, the clause found at 852.236-90, "Restriction on Submission and Use of Equal Products," shall be included in the solicitation.

[52 FR 282, Jan. 5, 1987, as amended at 53 FR 7756, Mar. 10, 1988; 53 FR 9631, Mar. 24, 1988; 54 FR 40065, Sept. 29, 1989; 61 FR 20492, May 7, 1996; 63 FR 17338, Apr. 9, 1998]

##### 836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000;
- (b) Between \$25,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;
- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$2,000,000;
- (g) Between \$2,000,000 and \$5,000,000;
- (h) Between \$5,000,000 and \$10,000,000;
- (i) Between \$10,000,000 and \$20,000,000;
- (j) Between \$20,000,000 and \$50,000,000;
- (k) Between \$50,000,000 and \$100,000,000;
- (l) More than \$100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR Subpart 1.4.)

[53 FR 1631, Jan. 21, 1988]

**836.206 Liquidated damages.**

Liquidated damage provisions may be included in construction contracts when the criteria of 811.502 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.211-78 will be included in addition to the clause set forth in FAR 52.211-12.

[49 FR 12618, Mar. 29, 1984, as amended at 63 FR 17338, Apr. 9, 1998]

**836.208 Concurrent performance of firm fixed-price and other types of construction contracts.**

When concurrent contracts of the type specified in FAR 36.208 are considered necessary or advantageous, prior approval will be requested of the Under Secretary for Health for contracts involving Maintenance and Repair (M&R) funds or of the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction (major and minor) funds. Complete justification will be furnished in the request.

[49 FR 12618, Mar. 29, 1984, as amended at 54 FR 40065, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

**836.209 Construction contracts with architect-engineer firms.**

When it is considered necessary or advantageous to award a contract for construction of a project to a firm or person that designed the project, prior approval will be requested of the Under Secretary for Health for contracts involving M&R funds or of the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 11586, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

**836.211 Distribution of advance notices and solicitations.**

Distribution of specifications and drawings on Central Office projects

will be in accordance with that established by the Project Director.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 11586, Mar. 21, 1996; 61 FR 20492, May 7, 1996]

**Subpart 836.3—Special Aspects of Sealed Bidding in Construction Contracting****836.371 Notice to proceed.**

(a) Construction contractors will be given a written "Notice to Proceed" with the work. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested. It will advise the contractor that the work will be completed within \_\_\_\_ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail is used, the certified mail receipt card returned by the post office will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and

### 836.513

### 48 CFR Ch. 8 (10-1-00 Edition)

D of the contract after the date of receipt has been established and indicated thereon.

[49 FR 12618, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 11587, Mar. 21, 1996; 61 FR 20492, May 7, 1996]

#### Subpart 836.5—Contract Clauses

##### 836.513 Accident prevention.

The contracting officer shall insert the clause at 852.236-87, Accident Prevention, in all solicitations that contain the clause at FAR 52.236-13, Accident prevention, or its Alternate.

[58 FR 48974, Sept. 21, 1993; 58 FR 58730, Nov. 3, 1993]

#### Subpart 836.6—Architect-Engineer Services

##### 836.602 Selection of firms for architect-engineer contracts.

###### 836.602-1 Selection criteria.

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Specific experience and qualifications of personnel proposed for assignment to the project, and record of working together as a team.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

###### 836.602-2 Evaluation boards.

Central Office architect-engineer contractors will be selected by the

board appointed by the Chief Facilities Management Officer, Office of Facilities Management. Field facility architect-engineer contractors will be selected by the board appointed by the facility director.

(a) The evaluation board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when necessary. The board's members as appointed by the Chief Facilities Management Officer, Office of Facilities Management, will include the appropriate Area Project Manager and as many qualified professional architects or engineers from the Office of Facilities Management technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities Management or from other VA administrations and staff offices will be designated for projects when appropriate.

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the head of the contracting activity and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

###### 836.602-4 Selection authority.

The Chief Facilities Management Officer, Office of Facilities Management (for Central Office contracts) and the facility director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 61 FR 11587, Mar. 21, 1996]

**836.602-5 Procedure for procurements estimated not to exceed the Simplified Acquisition Threshold.**

Either of the procedures provided in FAR 36.602-5 may be used when authorized by the Chief Facilities Management Officer, Office of Facilities Management.

[49 FR 12618, Mar. 29, 1984, as amended at 53 FR 1631, Jan. 21, 1988; 61 FR 11587, Mar. 21, 1996]

**836.606-70 General.**

To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

**836.606-71 Architect-engineer's proposal.**

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be \$50,000 or over. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

**836.606-72 Contract price.**

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Chief Facilities Management Officer, Office of Facilities Management, or the facility director. Recommendation for award of the contract at the negotiated fee, will be submitted with a copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, whenever a field pricing report has

been received, to the Chief Facilities Management Officer, Office of Facilities Management, or the facility director, as appropriate.

[52 FR 282, Jan. 5, 1987, as amended at 54 FR 40065, Sept. 29, 1989; 61 FR 11587, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

**836.606-73 Application of 6-percent architect-engineer fee limitation.**

(a) The 6-percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys: Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus

the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.

[49 FR 12618, Mar. 29, 1984, as amended at 61 FR 20493, May 7, 1996]

## PART 837—SERVICE CONTRACTING

### Subpart 837.1—Service Contracts—General

Sec.

837.103 Contracting officer responsibility.

837.104 Personal services contracts.

### Subpart 837.2—Advisory and Assistance Services

837.203 Policy.

837.270 Special controls for letters of agreement.

### Subpart 837.3—Dismantling, Demolition, or Removal of Improvements

837.300 Scope of subpart.

### Subpart 837.4—Nonpersonal Health-Care Services

837.403 Contract clause.

### Subpart 837.70—Mortuary Services

837.7001 General.

837.7002 List of qualified funeral directors.

837.7003 Funeral authorization.

837.7004 Administrative necessity.

837.7005 Unclaimed remains—all other cases.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12620, Mar. 29, 1984, unless otherwise noted.

### Subpart 837.1—Service Contracts—General

#### 837.103 Contracting officer responsibility.

When the contracting officer determines that legal assistance is necessary in determining whether a proposed service contract is for personal or nonpersonal services, he/she shall

gather all the pertinent facts and request the opinion of District Counsel responsible for servicing the VA facility involved.

#### 837.104 Personal services contracts.

(a) Personal service contracts having an employer-employee relationship shall not be awarded but will be consummated in accordance with VA Manual MP-5, Parts I and II.

(b) In addition to the elements used in assessing whether or not a contract is personal in nature identified in FAR 37.104(d), the following circumstances may also indicate a possible personal service contract.

(1) The contract does not call for an end product which is adequately described in the contract.

(2) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(3) Office space, equipment and supplies for contract performance are to be furnished by the Department of Veterans Affairs.

(4) Contractor personnel are to be used interchangeably with Department of Veterans Affairs personnel to perform the same function.

(5) The Department of Veterans Affairs retains the right to control and direct the means and methods by which contractor personnel accomplish the work.

[49 FR 12620, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 61 FR 20493, May 7, 1996]

### Subpart 837.2—Advisory and Assistance Services

#### 837.203 Policy.

For the purpose of this subpart the definition of advisory and assistance services shall, in addition to examples listed in FAR 37.203, include services to obtain peer review of research proposals.

[64 FR 69221, Dec. 16, 1998]

#### 837.270 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure advisory and assistance