

### 37.107

promote economical business operations when acquiring services.

[60 FR 37778, July 21, 1995, as amended at 62 FR 44815, Aug. 22, 1997; 63 FR 58601, Oct. 30, 1998]

#### 37.107 Service Contract Act of 1965.

The Service Contract Act of 1965 (41 U.S.C. 351-357) (the Act) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts (see subpart 22.10). Whether or not the Act applies to a specific service contract will be determined by the definitions and exceptions given in the Act, or implementing regulations.

#### 37.108 Small business Certificate of Competency.

In those service contracts for which the Government requires the highest competence obtainable, as evidenced in a solicitation by a request for a technical/management proposal and a resultant technical evaluation and source selection, the small business Certificate of Competency procedures may not apply (see subpart 19.6).

#### 37.109 Services of quasi-military armed forces.

Contracts with *Pinkerton Detective Agencies* or similar organizations are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract's character. An organization providing guard or protective services does not thereby become a *quasi-military armed force*, even though the guards are armed or the organization provides general investigative or detective services. (See 57 Comp. Gen. 524).

#### 37.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.237-1, Site Visit, in solicitations for services to be performed on Government installations, unless the solicitation is for construction.

(b) The contracting officer shall insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and

### 48 CFR Ch. 1 (10-1-11 Edition)

contracts for services to be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

[48 FR 42365, Sept. 19, 1983, as amended at 55 FR 52795, Dec. 21, 1990; 57 FR 60584, Dec. 21, 1992]

#### 37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised

## Federal Acquisition Regulation

## 37.114

more than once, but the total extension of performance thereunder shall not exceed 6 months.

[54 FR 29282, July 11, 1989]

### **37.112 Government use of private sector temporaries.**

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR part 300, subpart E, Use of Private Sector Temporaries, and agency procedures.

[56 FR 55380, Oct. 25, 1991]

### **37.113 Severance payments to foreign nationals.**

#### **37.113-1 Waiver of cost allowability limitations.**

(a) The head of the agency may waive the 31.205-6(g)(6) cost allowability limitations on severance payments to foreign nationals for contracts that—

(1) Provide significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

(c) Waivers cannot be granted for—

(1) Military banking contracts, which are covered by 10 U.S.C. 2324(e)(2); or

(2) Severance payments made by a contractor to a foreign national employed by the contractor under a DOD service contract in the Republic of the Philippines, if the discontinuation of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines (section 1351(b) of

Public Law 102-484, 10 U.S.C. 1592, note).

[60 FR 42661, Aug. 16, 1995, as amended at 68 FR 43867, July 24, 2003]

#### **37.113-2 Solicitation provision and contract clause.**

(a) Use the provision at 52.237-8, Restriction on Severance Payments to Foreign Nationals, in all solicitations that meet the criteria in 37.113-1(a), except for those excluded by 37.113-1(c).

(b) When the head of an agency has granted a waiver pursuant to 37.113-1, use the clause at 52.237-9, Waiver of Limitation on Severance Payments to Foreign Nationals.

[60 FR 42261, Aug. 16, 1995, as amended at 68 FR 43867, July 24, 2003]

#### **37.114 Special acquisition requirements.**

Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that—

(a) A sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(b) A greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see 7.503(c)).

(c) All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the