

636.104-71

(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.

[69 FR 19337, Apr. 13, 2004]

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.

[69 FR 19337, Apr. 13, 2004]

Subpart 636.2—Special Aspects of Contracting for Construction

636.202 Specifications.

(d) The Director/Chief Operating Officer of the Bureau of Overseas Building Operations is the head of the agency

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for the purposes of FAR 36.202(d)(3) and (4).

[69 FR 19337, Apr. 13, 2004]

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) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236-70, Accident Prevention, in lieu of FAR clause 52.236-13 when awarding construction contracts. 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.

[64 FR 43628, Aug. 11, 1999, as amended at 69 FR 19337, Apr. 13, 2004]

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