

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

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634.003 Responsibilities.
634.005 General requirements.
634.005-6 Full production.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 34.003(a).

(b) The Under Secretary for Management is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A-109.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 64 FR 43628, Aug. 11, 1999]

634.005 General requirements.

634.005-6 Full production.

The Deputy Secretary is the agency head for the purposes of FAR 34.005-6 with power of redelegation to the Under Secretary for Management.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

Subpart 636.1—General

636.101 Applicability.

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.

[69 FR 19337, Apr. 13, 2004]

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

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(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

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the project involves low-level technology, as determined by the Assistant Secretary of Diplomatic Security.

[69 FR 19337, Apr. 13, 2004]

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602-1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602-1(b).

[64 FR 43628, Aug. 11, 1999]

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

The short selection process described in FAR 36.602-5 is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[59 FR 66766, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

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637.102 Policy.

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

637.103 Contracting officer responsibility.

637.104 Personal services contracts.

637.104-70 Personal services contracts.

637.110 Solicitation provisions and contract clauses.

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

Subpart 637.6—Performance-Based Contracting

637.601 General.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

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Subpart 637.1—Service Contracts—General

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.

[69 FR 19337, Apr. 13, 2004]

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104-70 Personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau of Population, Refugees, and Migration, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics and Law Enforcement Affairs, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);