

## Department of Veterans Affairs

836.606-73

### **836.603 Collecting data on and appraising firms' qualifications.**

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

[67 FR 49260, July 30, 2002]

### **836.606 Negotiations.**

#### **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 facil-

ity 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; 67 FR 49260, July 30, 2002]

## PART 837—SERVICE CONTRACTING

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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