

**236.270 Expediting construction contracts.**

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be re-delegated. The approval authority must—

- (1) Certify that the additional expenditures are necessary to protect the National interest; and
  - (2) Establish a reasonable completion date for the project.
- (b) The contracting officer may approve an expedited completion date if no additional costs are involved.

**236.271 Cost-plus-fixed-fee contracts.**

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7749, Feb. 29, 1996]

**236.272 Prequalification of sources.**

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification—

- (1) Results in a list of sources determined to be qualified to perform a specific construction contract; and
- (2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

- (1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and
- (2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

- (1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;
- (2) Permit the small business to submit a bid or proposal if the preliminary

recommendation is that the small business is responsible; and

- (3) Follow the procedures in FAR 19.6, if the small business is in line for award and is found nonresponsible.

**236.273 Construction in foreign countries.**

(a) In accordance with Section 112 of Pub. L. 105-45 and similar sections in subsequent military construction appropriations acts, military construction contracts funded with military construction appropriations, that are estimated to exceed \$1,000,000 and are to be performed in the United States outlying area in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless—

- (1) The lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent; or
- (2) The contract is for military construction on Kwajalein Atoll and the lowest responsive and responsible offer is submitted by a Marshallese firm.

(b) See PGI 236.273(b) for guidance on technical working agreements with foreign governments.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2856, Jan. 17, 1997; 62 FR 34127, June 24, 1997; 63 FR 11538, Mar. 9, 1998; 66 FR 49861, Oct. 1, 2001; 70 FR 35545, June 21, 2005. Redesignated and amended at 71 FR 9273, Feb. 23, 2006]

**Subpart 236.5—Contract Clauses**

**236.570 Additional provisions and clauses.**

(a) Use the following clauses in all fixed-price construction solicitations and contracts—

- (1) 252.236-7000, Modification Proposals-Price Breakdown; and
- (2) 252.236-7001, Contract Drawings and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable—

- (1) 252.236-7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.