

# MS 739 Construction Contracts Procedures

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**Effective Date:** February 21, 2012

**Responsible Office:** Office of Acquisitions and Contract Management

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## **1.0 Architect-Engineer Contracts**

### **1.1 Architect-Engineer Contractor Evaluations**

The Contracting Officer shall appoint a permanent or ad hoc panel for the purpose of evaluating the qualifications of architect-engineer firms to provide the required services for a given project. At least one member of the panel should possess expertise in architecture, engineering and construction. This member may be appointed from another agency or private industry; however, no firm shall be eligible for award of an architect-engineer or construction contract during the period in which any of its principals or associates are serving on the evaluation panel.

When a construction project is contemplated, the Contracting Officer shall invite qualified architect-engineer firms to submit bids for the required services. The evaluation panel shall evaluate each responding firm on the basis of the following criteria:

1. Professional qualifications necessary for satisfactory performance of the required services;
2. Specialized experience and technical competence in the type of work to be performed;
3. Capacity to accomplish the work in the required time;
4. Past contract performance;
5. Location in the geographic area and knowledge of locality of project, provided an appropriate number of firms exist;
6. Acceptability under other appropriate criteria.

The evaluation panel shall conduct discussions with at least three (if available) of the most highly qualified firms. Based on its evaluation, the panel shall prepare a selection report recommending, in order of preference, at least three firms that are considered to be the most highly qualified. No pricing information shall be discussed with offerors or evaluated by the panel.

## **1.2 Negotiation and Award**

The Contracting Officer shall begin negotiations with the most highly qualified firm. If a mutually satisfactory contract with the most highly qualified firm, including price, cannot be negotiated, the Contracting Officer shall request a written Final Proposal Revision from the firm, notify the firm that negotiations are being terminated and begin negotiations with the next most highly qualified firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract, including price, has been negotiated. Standard Form 252, "Architect-Engineer Contract" (Attachment B), shall be used.

## **1.3 Design within Funding Limitations**

The government may require the architect-engineer firm to design the project so that construction will not exceed a contractually specified monetary limit. If the price of construction exceeds the construction funding limitation in the architect-engineer contract, the architect-engineer firm shall be solely responsible for redesigning the project within the funding limitation at no increase in the price of the contract. However, if the cost of the proposed construction is affected by events beyond the architect-engineer firm's reasonable control (e.g., unanticipated increases in prices of materials, or an undue delay by the Government in issuing a construction solicitation), the firm shall not be obligated to redesign at no cost to the Government.

## **1.4 Redesign Responsibility for Design Errors or Deficiencies**

Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the Government when designs, drawings, specifications or other items or services furnished contain any errors, deficiencies or inadequacies.

## **1.5 Scope of Services**

At a minimum, the services of an architect-engineer firm shall be used to prepare the plans and specifications for the contemplated construction project. However, architect-engineer contracts may also require the firm to participate in the review of proposals in response to the ensuing construction solicitation and may also provide on-site inspection after award of the construction contract and commencement of work.

## **2.0 Construction Contracts**

### **2.1 Government Estimate of Construction Costs**

An independent government estimate of construction costs shall be prepared at the earliest practicable time for each proposed contract. The overall amount of the Government's estimate shall not be disclosed, except that during contract negotiations a sub-task may be identified and the associated cost estimate of the Government disclosed to the extent deemed necessary to arrive at a fair and reasonable price. Advance notices and solicitations shall state the magnitude of the job in terms of physical description and estimated price range. The estimated price should be described in terms of one of the following price ranges:

- a) Less than \$25,000
- b) Between \$25,000 and \$100,000

- c) Between \$100,000 and \$250,000
- d) Between \$250,000 and \$500,000

In no event shall the statement of magnitude disclose the Government's cost estimate.

## **2.2 Requests for Proposals**

Requests for Proposals for construction shall allow sufficient time for bid preparation, giving due regard to the construction season, and time necessary for offerors to inspect the site, obtain sub-contract bids and examine plans and specifications.

Request for Proposals shall be prepared using the "Request for Proposal- Fixed Price Construction" form included as Attachment E.

## **2.3 Evaluation of Proposals**

The Contracting Officer shall evaluate each proposal submitted in response to the Request for Proposals (RFP). Given the technical nature of the work involved, the Contracting Officer may request the assistance of individuals with construction expertise to determine if an offeror's proposal is responsive to the technical requirements of the RFP. For this reason, Contracting Officers may find it useful to provide for this type of assistance in any architect-engineer contract awarded for development of plans and specifications. A determination shall be made regarding each offeror's understanding of the project and whether the offeror can meet the requirements of the RFP at a reasonable cost. All offerors meeting these two conditions shall be considered to be in the "competitive range."

## **2.4 Negotiations**

The Contracting Officer shall conduct written or oral discussions with all offerors in the competitive range. These discussions should provide each offeror an opportunity to submit revisions to its proposal, including cost or price revisions, and allow Peace Corps and the offeror to clarify any efforts or uncertainties in the proposal. Upon completion of discussions, the Contracting Officer shall request each offeror in the competitive range to submit a "Final Revised Proposal" offer.

## **2.5 Award**

The Contracting Officer shall award the contract to the offeror whose best and final offer is most advantageous to the Government, price and other factors considered. The standard Peace Corps Construction contract (Attachment C) shall be used.

Note: Delegation of additional procurement authority must be received from the Office of Acquisitions and Contract Management prior to execution of a contract in excess of \$25,000 (or the Contracting Officer's delegated amount). Contracting Officers must be aware that their exercise of delegated procurement authority is also subject to the availability of funds in the post budget for obligation purposes.