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**US Army Corps
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Middle East District
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Military Construction in Foreign Countries

While every clause in a Government contract is important, the below-referenced clause may have direct financial impact on non-U.S. contractors. Interested parties should closely review such a solicitation provision early in the acquisition process. The clause states:

DFARS 252.236-7010, Overseas Military Construction - Preference for United States Firms (JAN 1997)

(a) Definition. "United States firm," as used in this provision, means a firm incorporated in the United States that complies with the following:

- (1) The corporate headquarters are in the United States;
- (2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
- (3) The firm employs United States citizens in key management positions.

(b) Evaluation. Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) Status. The offeror _____ is, _____ is not a United States firm.

The clause implements the "American Preference Policy," and provides competitive assistance to United States companies in the award of construction contracts in the Arabian Gulf and other regions.

This clause, which CETAM includes in all solicitations for military construction appropriations-financed contracts performed in any country bordering the Arabian Gulf estimated to exceed \$1M, adds a 20% premium to the prices proposed by non-U.S. firms' offers.

Contractors submitting a proposal for a solicitation containing the DFARS 252.236-7010 clause will need to identify in their Representations and Certifications whether or not they have status as a U.S. firm.

While the formation of a Joint Venture (JV) or partnership which includes a non-U.S. firm as a participant is not an automatic disqualification from application of the American Preference policy, the JV must meet the requirements of DFARS 252.236.-7010 to qualify as a U.S. firm.

JVs and partnerships with individual participants that are not U.S. firms which seek to avoid application of the 20% premium should carefully review the solicitation and inquire with the CETAM contracting officer if there is any question whether they qualify as a U.S. firm for the purpose of the competition.