

Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995).

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; telefax (703) 602-0350. Please cite DFARS Case 98-D007.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes, with changes, the interim rule published at 63 FR 41972 on August 6, 1998. The interim rule was issued to conform the DFARS to the interim FAR rule published in FAC 97-06, at 63 FR 35719 on June 30, 1998, pertaining to reform of affirmative action in Federal procurement. A final FAR rule on this subject was published in FAC 97-13, at 64 FR 36222 on July 2, 1999, and will become effective on October 1, 1999.

Two sources submitted comments on the interim DFARS rule published on August 6, 1998. All comments were considered in the development of the final rule. The final rule differs from the interim rule in that it (1) amends DFARS 226.7008(b) to remove language requiring use of the provision at FAR 52.226-2 when the clause at FAR 52.219-23 is used, since FAC 97-13 added this requirement to the FAR; and (2) removes the provision at 252.226-7001, since this provision duplicates the provision at FAR 52.226-2.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes merely conform the DFARS to the FAR rules in FACs 97-06 and 97-13. Two source selection considerations for SDB concerns currently in the DFARS, but not in the FAR, are amended by this rule to conform to the DoJ model: Leader company contracting (DFARS 217.401); and architect-engineer (A-E) services (DFARS 236.602). These two changes are not expected to have a significant economic impact on a substantial number of small entities, since (1) leader company contracting is infrequently used by DoD; and (2) the primary factor in A-E selection is the determination of the most highly

qualified firm; the SDB consideration is one of several secondary source selection factors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 205, 206, 217, 219, 225, 226, 236, 252, and 253

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 205, 206, 217, 219, 225, 226, 236, 252, and 253, which was published at 63 FR 41972 on August 6, 1998, and amended at 63 FR 64427 on November 20, 1998, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 205, 206, 217, 219, 225, 226, 236, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7008 is amended by revising paragraph (b) to read as follows:

226.7008 Solicitation provision and contract clause.

* * * * *

(b) Use the provision at FAR 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations set aside for HBCU/MIs.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.226-7001 [Removed]

3. Section 252.226-7001 is removed.

[FR Doc. 99-25162 Filed 9-29-99; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to Chapter 2

[DFARS Case 98-D021]

Defense Federal Acquisition Regulation Supplement; Reform of Affirmative Action in Federal Procurement, Part II

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) policy concerning programs for small disadvantaged business (SDB) concerns. The amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement, and are consistent with the changes made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circulars (FACs) 97-07 and 97-13. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097 (1995).

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; telefax (703) 602-0350. Please cite DFARS Case 98-D021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes, without change, the interim rule published at 63 FR 64427 on November 20, 1998. The interim rule was issued to conform the DFARS to the interim FAR rule published in FAC 97-07, at 63 FR 36120 on July 1, 1998, pertaining to reform of affirmative action in Federal procurement. A final FAR rule on this subject was published in FAC 97-13, at 64 FR 36222 on July 2, 1999, and will become effective on October 1, 1999.

No comments were received in response to the interim DFARS rule published on November 20, 1998.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact

on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes merely conform the DFARS to the FAR rule in FAC 97-07. Two source selection considerations for SDB concerns currently in the DFARS, but not in the FAR, are amended by this rule to conform to the DoJ model: Leader company contracting (DFARS 217.401); and architect-engineer (A-E) services (DFARS 236.602). These two changes are not expected to have a significant economic impact on a substantial number of small entities, since (1) leader company contracting is infrequently used by DoD; and (2) the primary factor in A-E selection is the determination of the most highly qualified firm; the SDB consideration is one of several secondary source selection factors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215, 217, 219, 226, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 215, 217, 219, 226, 236, 252, and Appendix I to Chapter 2, which has published at 63 FR 64427 on November 20, 1998, is adopted as a final rule without change.

[FR Doc. 99-25163 Filed 9-29-99; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

[DFARS Case 97-D318]

Defense Federal Acquisition Regulation Supplement; Contractor Use or Nonimmigrant Aliens—Guam

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule addresses statutory prohibitions against

the performance of work by nonimmigrant aliens under DoD contracts for military construction or base operations support on Guam.

DATES: September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0288; telefax (703) 602-0350. Please cite DFARS Case 97-D318.

SUPPLEMENTARY INFORMATION:

A. Background

This rule finalizes, with changes, the interim rule published at 63 FR 31935 on June 11, 1998. The interim rule added a new DFARS Subpart 222.73 and a new contract clause at DFARS 252.222-7005 to implement Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). Section 390 provides that each DoD contract for base operations support to be performed on Guam must contain a condition that work under the contract may not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a) (15) (H) (ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (15) (H) (ii)).

Four sources submitted comments on the interim rule. DoD considered all comments in the development of the final rule. The final rule differs from the interim rule in that it incorporates the similar restrictions of 10 U.S.C. 2864 pertaining to military construction contracts on Guam, and clarifies that the prohibition against performance of work by nonimmigrant aliens does not apply to lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to military construction and base operations support contracts to be performed on Guam.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not

impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 222 and 252, which was published at 63 FR 31935 on June 11, 1998, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 222.73 is revised to read as follows:

Subpart 222.73—Limitations Applicable to Contracts Performed on Guam

Sec.

222.7300 Scope of subpart.
222.7301 Prohibition on use of nonimmigrant aliens.
222.7302 Exception.
222.7303 Contract clause.

222.7300 Scope of subpart.

- (a) This subpart implements—
- (1) 10 U.S.C. 2864; and
 - (2) Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85).
- (b) This subpart applies to—
- (1) Contracts for military construction projects on Guam; and
 - (2) Contracts for base operations support on Guam that—
 - (i) Are awarded as a result of a competition conducted under OMB Circular A-76; and
 - (ii) Are entered into or modified on or after November 18, 1997.

222.7301 Prohibition on use of nonimmigrant aliens.

(a) Any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is prohibited from performing work under a contract for—

- (1) A military construction project on Guam; or