

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.

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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

(2) Base operations support on Guam.

(b) 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 are not subject to the prohibition in paragraph (a) of this section.

222.7302 Exception.

The prohibition in 222.7301(a)(1) does not apply to a military construction project if—

(a) There is no acceptable offer in response to a solicitation for the project;

(b) The Secretary concerned makes a determination that the prohibition is a significant deterrent to obtaining offers on the project; and

(c) Another solicitation is issued for the project.

222.7303 Contract clause.

Use the clause at 252.222-7005, Prohibition on Use of Nonimmigrant Aliens-Guam, in solicitations and contracts subject to this subpart, except those issued in accordance with 222.7302.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222-7005 is revised to read as follows:

252.222-7005 Prohibition on Use of Nonimmigrant Aliens—Guam.

As prescribed in 222.7303, use the following clause:

PROHIBITION ON USE OF NONIMMIGRANT ALIENS—GUAM (SEP 1999)

The work required by this contract shall 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)). This prohibition does not apply to the performance of work by 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.

(End of clause)

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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 401, 415, 437, and 452

[AGAR Case 96-04]

RIN 0599-AA07

Agriculture Acquisition Regulation; Part 415 Reorganization; Contracting by Negotiation

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule.

SUMMARY: The Department of Agriculture (USDA) is amending the Agriculture Acquisition Regulation (AGAR) to revise and reorganize part 415, Contracting by Negotiation. USDA is revising and reorganizing part 415 to reflect changes in the content and structure of Federal Acquisition Regulation (FAR) part 15, Contracting by Negotiation. This amendment makes it easier for users to consult AGAR part 415 in tandem with FAR part 15.

DATES: This rule is effective November 29, 1999 without further action, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before November 1, 1999. If we receive adverse comments, the Office of Procurement and Property Management will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Please submit any adverse comments, or a notice of intent to submit adverse comments, in writing to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, Stop 9303, 1400 Independence Avenue SW., Washington, DC 20250-9303.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, (202) 720-5729, or through the General Services Administration Relay Service, (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

II. Dates

III. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

B. Regulatory Flexibility Act

C. Paperwork Reduction Act

D. Small Business Regulatory Enforcement Fairness Act

IV. Electronic Access Addresses

I. Background

The AGAR implements the FAR (48 CFR chapter 1) where further implementation is needed, and supplements the FAR when coverage is

needed for subject matter not covered by the FAR. In September 1997, FAR Part 15, Contracting by Negotiation, was rewritten to simplify the source selection process and to facilitate best value acquisition (62 FR 51224, September 30, 1997). FAR Part 15 also was restructured to facilitate use of the regulation. USDA is amending the AGAR to reflect changes made to FAR part 15. USDA also is reorganizing AGAR part 415, Contracting by Negotiation, to reflect the new structure of FAR Part 15. In this rulemaking document, USDA is amending the AGAR as a direct final rule, since the changes are non-controversial and unlikely to generate adverse comment. The changes are administrative in nature, and do not affect the public.

Rules that an agency believes are noncontroversial and unlikely to result in adverse comment may be published in the **Federal Register** as direct final rules. The Office of Procurement and Property Management published a policy statement in the **Federal Register** (63 FR 9158, February 24, 1998) to notify the public of its intent to use direct final rulemaking in appropriate circumstances.

This rule makes the following changes to the AGAR:

(a) We are amending section 401.106 to reflect the restructuring of AGAR part 415. We are changing a reference to AGAR segment 415.4 to read AGAR segment 415.2.

(b) We are removing sections 415.103, 415.408, 415.411, 415.607, 415.608 and 415.612. These sections supplemented FAR regulatory guidance which has been removed from the FAR. AGAR coverage is no longer required.

(c) We are removing paragraph (b) of subsection 415.413-2. This paragraph merely restates guidance included in the FAR.

(d) We are moving the following segments of AGAR part 415 to match the numbering structure of FAR part 15 following its revision:

(1) Subsection 415.406-1, Uniform contract format, is now section 415.204, Contract format;

(2) Section 415.407, Solicitation provisions, is now section 415.209, Solicitation provisions and contract clauses;

(3) Paragraphs (c) through (e) of subsection 415.413-2, Disclosure and use of information before award—Alternate II, are now paragraphs (a) through (c) of section 415.207, Handling proposals and information.

(4) Subpart 415.5, Unsolicited Proposals, is now subpart 415.6, Unsolicited Proposals;