

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 225, 236, and 252**

[DFARS Case 96-D328]

**Defense Federal Acquisition Regulation Supplement; Preference for U.S. Firms on MILCON Overseas Construction**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 112 provides a 20 percent preference for United States firms on all contracts estimated to exceed \$1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

**DATES:** *Effective date:* January 17, 1997.

*Comment Date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D328 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends the DFARS to implement Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). The rule contains, at 236.274(a), the statutory restriction on award of overseas military construction contracts; and adds a solicitation provision at 252.236-7010, Overseas Military Construction-Preference for United States Firms.

**B. Regulatory Flexibility Act**

This interim rule is not expected to 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 only applies to contracts estimated to exceed \$1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf. It is estimated that only 12 such contracts are awarded per year. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D328 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies. It is estimated that the new provision at DFARS 252.236-7010 will increase, by 5 hours, the annual paperwork burden associated with DFARS Part 236 and related provisions/ clauses. The Office of Management and Budget (OMB) has approved this increase under OMB Control Number 0704-0255.

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 112 provides a 20 percent preference for United States firms on all contracts estimated to exceed \$1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf. Immediate publication of an interim rule is necessary to promptly comply with Section 112. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 225, 236, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 236, and 252 continues to read as follows:

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

**PART 225—FOREIGN ACQUISITION**

2. Section 225.7000 is amended by revising paragraph (a) to read as follows:

**225.7000 Scope of subpart.**

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by Defense appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

\* \* \* \* \*

3. Section 225.7003 is added to read as follows:

**225.7003 Restriction on overseas military construction.**

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

**PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

4. Section 236.274 is amended by redesignating the introductory text as paragraph (b); by redesignating paragraphs (a) and (b) as paragraphs (b)(1) and (b)(2), respectively; by redesignating paragraphs (b)(1) through (b)(8) as paragraphs (b)(2)(i) through (b)(2)(viii); and by adding a new paragraph (a) to read as follows:

**236.274 Construction in foreign countries.**

(a) In accordance with Section 112 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, military construction contracts that are estimated to exceed \$1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless 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.

\* \* \* \* \*

5. Section 236.570 is amended by adding paragraph (c) to read as follows:

**236.570 Additional provisions and clauses.**

\* \* \* \* \*

(c) Use the provision at 252.236-7010, Overseas Military Construction-Preference for United States Firms, in solicitations for military construction

contracts that are estimated to exceed \$1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Section 252.236-7010 is added to read as follows:

##### **252.236-7010 Overseas Military Construction—Preference for United States Firms.**

As prescribed in 236.570(c), use the following provision:

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.

(End of provision)

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#### **DEPARTMENT OF DEFENSE**

#### **48 CFR Parts 225, 236, and 252**

[DFARS Case 96-D329]

#### **Defense Federal Acquisition Regulation Supplement; Restriction on MILCON Overseas Architect-Engineer Contracts**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Pub. L. 104-196). Section 111 restricts award of architect-engineer contracts estimated to exceed \$500,000 for projects to be accomplished in Japan, in any North

Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to United States firms or United States firms in joint venture with host nation firms.

**DATES:** *Effective date:* January 17, 1997.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D329 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

This interim rule amends the DFARS to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). The rule contains, at 236.602-70, the statutory restriction on award of overseas architect-engineer contracts; and adds a new solicitation provision at 252.236-7011, Overseas Architect-Engineer Services—Restriction to United States Firms.

##### **B. Regulatory Flexibility Act**

This interim rule is not expected to 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 only applies to architect-engineer contracts estimated to exceed \$500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D329 in correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this interim rule does not impose any information collection requirements that require approval of

the Office of Management and Budget under 44 U.S.C. 3501, et seq.

##### **D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 111 restricts award of architect-engineer contracts estimated to exceed \$500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to United States firms or United States firms in joint venture with host nation firms. Immediate publication of an interim rule is necessary to promptly comply with Section 111. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225, 236, and 252

##### **Government procurement.**

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

Therefore, 48 CFR Parts 225, 236, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 236, and 252 continues to read as follows:

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

#### **PART 225—FOREIGN ACQUISITION**

2. Section 225.7004 is added to read as follows:

##### **225.7004 Restriction on overseas architect-engineer services.**

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602-70.

#### **PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

3. Section 236.102 is amended by adding paragraph (4) to read as follows:

##### **236.102 Definitions.**

\* \* \* \* \*

(4) *United States firm* is defined in the provisions at 252.236-7010, Overseas Military Construction-Preference for United States Firms, and 252.236-7011,