

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

* * * * *

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that—

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

Alternate I (MAR 2000).

As prescribed in 247.573(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

Alternate II (MAR 2000).

As prescribed in 247.573(b)(3), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment),

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange

cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

9. Section 252.247–7024 is amended by revising the clause date and paragraph (b) to read as follows:

252.247–7024 Notification of Transportation of Supplies by Sea.

* * * * *

Notification of Transportation of Supplies by Sea (Mar 2000)

* * * * *

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

[DFARS Case 99–D308]

Defense Federal Acquisition Regulation Supplement; Construction and Service Contracts in Noncontiguous States

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act. Section 8071 provides that DoD contracts for construction or services performed in a

noncontiguous State, that has an unemployment rate in excess or the national average, must include a clause requiring the contractor to employ individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

DATES: Effective date: March 16, 2000.

Comment date: Comments on the interim rule should be submitted in writing to the address shown on or before May 15, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 99–D308 in all correspondence related to this rule. E-mail comments should cite DFARS Case 99–D308 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS Subpart 222.70 and the clause at 252.222–7000 to implement Section 8071 of the Fiscal Year 2000 Defense Appropriations Act (Public Law 106–79). Section 8071 provides that DoD contracts for construction or services performed in a State (as defined in 10 U.S.C. 381(d)), that is not contiguous with another State and has an unemployment rate in excess of the national average, must include a clause requiring the contractor to employ, for the purpose of performing that portion of the contract in the noncontiguous State, individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills.

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 does not expect this rule 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. A similar DFARS requirement already exists for the noncontiguous States of Alaska and Hawaii. DoD knows of no economic impact on small entities that has resulted from the implementation of

this requirement in those States. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D308.

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.

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 8071 of the Fiscal Year 2000 Defense Appropriations Act (Public Law 106–79). Section 8071 provides that each DoD contract awarded during the current fiscal year, for construction or services performed in a noncontiguous State that has an unemployment rate in excess of the national average, must include a clause requiring the contractor to employ individuals who are residents of that State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. Section 8071 became effective on October 25, 1999. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

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

Therefore, 48 CFR Parts 222 and 252 are amended as follows:

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 222.70 is revised to read as follows:

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction and Service Contracts in Noncontiguous States

Sec.	
222.7000	Scope of subpart.
222.7001	Definition.
222.7002	General.
222.7003	Waivers.
222.7004	Contract clause.

222.7000 Scope of subpart.

(a) This subpart implements Section 8071 of the Fiscal Year 2000 Defense Appropriations Act, Public Law 106–79, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—
(1) To construction and service contracts to be performed in whole or in part within a noncontiguous State; and
(2) When the unemployment rate in the noncontiguous State is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7001 Definition.

“Noncontiguous State,” as used in this subpart, means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any minor outlying island of the United States.

222.7002 General.

A contractor awarded a contract subject to this subpart must employ, for the purpose of performing that portion of the contract work within the noncontiguous State, individuals who are residents of that noncontiguous State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform this contract.

222.7003 Waivers.

The Secretary of Defense may waive the requirements of 222.7002 on a case-by-case basis in the interest of national security.

222.7004 Contract clause.

Use the clause at 252.222–7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart. Insert the name of the appropriate noncontiguous State in paragraph (a) of the clause.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222–7000 is revised to read as follows:

252.222.7000 Restrictions on Employment of Personnel.

As prescribed in 222.7004, use the following clause: RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in _____, individuals who are residents thereof and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract. (End of clause)

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