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## **DEPARTMENT OF AGRICULTURE**

### **48 CFR Part 422**

**RIN 0599-AA19**

#### **Office of Procurement and Property Management; Agriculture Acquisition Regulation, Labor Law Violations**

**AGENCY: Office of Procurement and Property Management, Department of Agriculture**

**ACTION: Proposed Rule**

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**SUMMARY:** The Office of Procurement and Property Management (OPPM) of the Department of Agriculture (USDA) proposes to amend the Agriculture Acquisition Regulation (the “AGAR”) to add a new clause at subpart 422.70 entitled “Labor Law Violations.” In the final rule section of the **Federal Register**, the Agency is publishing this action as a direct final rule without prior proposal because OPPM views this as a non-controversial action and expects no

adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule, and the action will become effective at the time specified in the direct final rule. If the Agency receives adverse comments, a timely document will be published withdrawing the direct final rule, and all public comments received will be addressed in a subsequent final rule based on this action.

**DATES:** Interested parties should submit written comments to the Department of Agriculture, OPFM on or before **(Insert 60 days after publication in the Federal Register)** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified in the subject line as “48 CFR 422 Proposed Rule” by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: [Procurement@usda.gov](mailto:Procurement@usda.gov).
- Mail: Office of Procurement and Property Management, Procurement Policy Division, MAIL STOP 9306, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-9303.
- Hand Delivery/Courier: Room 262, Reporters’ Building, 300 7<sup>th</sup> Street SW, Washington, DC.

*Instructions:* All submissions must be identified as “48 CFR 422 Proposed Rule” for this proposed rulemaking. Please include your name, company name (if applicable), email address and/or phone number where you can be contacted if additional clarification is required regarding your comment(s).

**FOR FURTHER INFORMATION CONTACT:** Donna Calacone, Office of Procurement and Property Management, at (202) 205-4036 or by mail at OPPM, MAIL STOP 9304, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-9303. Please cite “48 CFR 422 (Proposed Rule)” in all correspondence.

## **SUPPLEMENTARY INFORMATION:**

### **A. BACKGROUND**

The U.S. Department of Agriculture (USDA) highly respects and follows the policies and laws regarding worker labor protections particularly as they pertain to the acquisition process. To support these objectives, this proposed rule adds a subpart and clause entitled *Labor Law Violations* to the Agriculture Acquisition Regulation (AGAR). The AGAR may be accessed at: <http://www.dm.usda.gov/procurement/policy/agar.html>. This clause is to be included in all USDA contracts that exceed the simplified acquisition threshold, including all contract options.

### **B. REGULATORY FLEXIBILITY ACT**

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. There is no additional submission required as a result of this action. The rule will not have a significant impact on the small business community or on a substantial number of small businesses. The Department invites comment on its estimates for the potential impact of this rulemaking on small businesses.

#### C. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act does not apply because the proposed rule does not impose any record keeping or information collection requirements that require approval by the Office of Management and Budget.

#### D. EXECUTIVE ORDERS 12866 AND 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant according to Executive Order 12866 and therefore this rule has not been reviewed by OMB.

#### E. EXECUTIVE ORDER 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### F. EXECUTIVE ORDER 13132

This proposed rule has been reviewed in accordance with Executive Order 13132, Federalism, and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

#### G. UNFUNDED MANDATES REFORM ACT OF 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), and therefore a written statement is not required.

#### H. EXECUTIVE ORDER 12372

This proposed rule has been reviewed in accordance with Executive Order 12372, Intergovernmental review of Federal programs, and does not establish federal financial assistance or direct Federal development with State and local governments, and is therefore outside the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### I. EXECUTIVE ORDER 13175

This proposed rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and does not have tribal implications or impose unfunded mandates with Indian tribes.

#### J. E-GOVERNMENT ACT COMPLIANCE

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This proposed rule requires one letter from requestors which can be sent electronically to USDA. USDA will continue to seek other avenues to increase electronically submitted information.

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List of Subjects in 48 CFR Part 422

Classified information, Computer technology, Government procurement, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Agriculture proposes to amend 48 CFR part 422, as follows:

PART 422- [AMENDED]

1. The authority citation for part 422 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Subpart 422.70 is added to read as follows:

**Subpart 422.70 -- Labor Law Violations**

**422.7001 Contract clause**

Insert the clause at 452.222-7001, *Labor Law Violations*, in solicitations and contracts that exceed the simplified acquisition threshold. Contracting officers shall report violations to the Office of Procurement and Property Management, Procurement Policy Division, within two working days following notification by the contractor.

**452.222-7001 Labor Law Violations**

As prescribed in 422.7001, insert the following clause:

**Labor Law Violations (August 2011)**

In accepting this contract award, the contractor certifies that it is in compliance with all applicable labor laws and that, to the best of its knowledge, its subcontractors of any tier, and

suppliers, are also in compliance with all applicable labor laws. The Department of Agriculture will vigorously pursue corrective action against the contractor and/or any tier subcontractor (or supplier) in the event of a violation of labor law made in the provision of supplies and/or services under this or any other government contract. The contractor is responsible for promptly reporting to the contracting officer when formal allegations or formal findings of non-compliance of labor laws are determined. The Department of Agriculture considers certification under this clause to be a certification for purposes of the False Claims Act. The Department will cooperate as appropriate regarding labor laws applicable to the contract which are enforced by other agencies.

(End of Clause)

Dated: November 17, 2011.

Lisa M. Wilusz  
Director, Office of Procurement and Property Management.

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