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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 236**

**RIN 0750-AI33**

**Defense Federal Acquisition Regulation Supplement: Use of  
Military Construction Funds in Countries Bordering the Arabian  
Sea (DFARS Case 2014-D016)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014, that restricts use of military construction funds in various countries, including countries bordering the Arabian Sea.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER], to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2014-D016, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D016" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D016" on your attached document.

- o E-mail: [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2014-D016 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941,

3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Since 1997, sections 111 and 112 of the annual military construction appropriations acts restrict use of military construction funds for acquisitions exceeding certain dollar thresholds of architect-engineer services and military construction contracts to be performed in certain foreign countries. With some exceptions, these restrictions require award to a U.S. firm or provide a preference for award to a U.S. firm.

These restrictions were first implemented as an interim rule in the DFARS under DFARS Case 1997-D307 (63 FR 11526) on March 9, 1998.

**II. Discussion and Analysis**

This interim rule revises the DFARS to implement sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113-76). The only change required is to apply the restriction to contracts to be performed in the countries bordering the Arabian Sea (rather than the Arabian Gulf). These countries are India, Iran, Oman, Pakistan, Somalia, and Yemen.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. 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., because it applies to a very limited number of small entities. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule is necessary to implement the restrictions on award to other than U.S. firms when awarding certain military construction and architect-engineer contracts to be performed in countries bordering the Arabian Sea.

The objective of this rule is to implement sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113-76). This rule revises the preference for award to U.S. firms of military construction contracts that have an estimated value greater than \$1,000,000 and the restriction requiring award only to U.S. firms for architect-engineer contracts that have an estimated value greater than \$500,000, to make it applicable to contracts to be performed in a country bordering the Arabian Sea, rather than a country bordering the Arabian Gulf (as required in earlier statutes).

This will only apply to a very limited number of small entities - those entities that submit offers in response to solicitations for military construction contracts that have an estimated value greater than \$1,000,000 and architect-engineer contracts that have an estimated value greater than \$500,000, when the contracts are to be performed in countries bordering the Arabian Sea.

There is a DFARS provision that requires for offerors to represent whether they are a U.S. firm. This rule impacts the prescription for applicability of that provision (changing Arabian Gulf to Arabian Sea).

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule does not impose any significant economic burden on small firms. The offeror must represent if it is a U.S. firm, but in return for a positive representation is granted a preference for award of the contract. DoD did not identify any alternatives that could reduce the burden and still meet the objectives of the rule.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014-D016), in correspondence.

#### **V. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply, however, the rule does not impose any new information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0255, Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts. The rule modifies the prescription for use of the provision at DFARS 252.236-7010, Overseas Military Construction--Preference for United States Firms, in an amount of less than 8 hours. Any change in the burden hours due to the changed prescription will be negligible.

#### **VI. 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 promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113-76). Delay in making this change to the DFARS may result in (1) the appropriations act restrictions being incorrectly applied to military construction and architect-engineer contracts to be performed in countries bordering the Arabian Gulf and (2) possible misuse of appropriated funds if DoD fails to provide appropriate preference for U.S. firms when performing such contracts in the countries bordering the Arabian Sea. Issuance as an interim rule is necessary to ensure immediate preference for U.S. firms when awarding construction contracts to be performed in countries bordering the Arabian Sea, in order to comply with the law and support the U.S. industrial base.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule."

**List of Subjects in 48 CFR Parts 225 and 236**

Government procurement.

**Amy G. Williams,**

Deputy, Defense Acquisition Regulations System.

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

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

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 225—FOREIGN ACQUISITION**

**225.7014 [Amended]**

2. In section 225.7014, amend paragraph (a) by removing "Arabian Gulf" and adding "Arabian Sea" in its place.

**225.7015 [Amended]**

3. Amend section 225.7015 by removing "Arabian Gulf" and adding "Arabian Sea" in its place.

**PART 236—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION**

4. In section 236.273, revise paragraph (a) introductory text to read as follows:

**236.273 Construction in foreign countries.**

(a) In accordance with section 112 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113-76) and similar sections in subsequent military construction appropriations acts, military construction contracts funded with military construction appropriations, that are estimated to exceed \$1,000,000 and are to be performed in the



United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Sea (i.e., India, Iran, Oman, Pakistan, Somalia, and Yemen)], shall be awarded only to United States firms, unless—

\* \* \* \* \*

**236.570 [Amended]**

5. In section 236.570, amend paragraph (c)(1) by removing "Arabian Gulf" and adding "Arabian Sea" in its place.

6. Revise section 236.602-70 to read as follows:

**236.602-70 Restriction on award of overseas architect-engineer contracts to foreign firms.**

In accordance with section 111 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113-76) and similar sections in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction appropriations that are estimated to exceed \$500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Sea (i.e., India, Iran, Oman, Pakistan, Somalia, and Yemen), shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

**236.609-70 [Amended]**

7. In section 236.609-70, amend paragraph (b)(3), by removing "Arabian Gulf" and adding "Arabian Sea" in its place.

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