



DEPARTMENT OF LABOR

This document is scheduled to be published in the Federal Register on 01/08/2013 and available online at <http://federalregister.gov/a/2013-00114>, and on FDsys.gov

Employment and Training Administration

Guam Military Base Realignment Contractor Recruitment Standards

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Notice.

SUMMARY: The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) is issuing this notice to announce recruitment standards that construction contractors are required to follow when recruiting United States (U.S.) workers for Guam military base realignment projects funded through the National Defense Authorization Act (NDAA) for Fiscal Year 2010.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais or Frank Gallo, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-4231, Washington, DC 20210. Telephone (202) 693-2784 or (202) 693-3755, respectively (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-3015. E-mail: dais.anthony@dol.gov or gallo.frank@dol.gov.

SUPPLEMENTARY INFORMATION: Section 2834(a) of the NDAA for Fiscal Year 2010 (Pub. L. 111-84, enacted October 28, 2009) amended Section 2824(c) of the Military Construction

Authorization Act (Pub. L. 110-417, Division B) by adding a new subsection (6). This provision prohibits contractors engaged in construction projects related to the realignment of U.S. military forces from Okinawa to Guam from hiring workers holding H-2B visas under the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b), unless the Governor of Guam (Governor), in consultation with the Secretary of Labor (Secretary), certifies that: 1) there is an insufficient number of U.S. workers that are able, willing, qualified, and available to perform the work; and 2) that the employment of workers holding H-2B visas will not have an adverse effect on either the wages or the working conditions of workers in Guam.

In order to allow the Governor to make this certification, the NDAA requires contractors to recruit workers in the U.S., including in Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and Puerto Rico, according to the terms of a recruitment plan developed and approved by the Secretary. That recruitment plan has been reproduced in full in Section I below ("Contractor Recruitment Standards").

The Department has developed the Contractor Recruitment Standards in full consultation with, and with the approval of, the Guam Department of Labor (GDOL). Although the Department has developed the recruitment standards, it has assigned oversight of the Contractor Recruitment Standards and the NDAA-required consultation with the Governor to GDOL through a

Memorandum of Understanding between the Department and GDOL, effective November 22, 2011 (the MOU can be found on the RegInfo.gov Web site listed at the end of this Federal Register Notice).

Under the NDAA, no Guam base realignment construction project work may be performed by a person holding an H-2B visa under the Immigration and Nationality Act until the contractor complies with the Department's Contractor Recruitment Standards, and the Governor of Guam issues the certification noted above.

The Department issued interim recruitment standards in the Federal Register on January 24, 2012 (77 Fed. Reg. 3503).

This Final Notice has made several changes to the interim contractor recruitment standards, the most significant of which reduced the data collection burden and clarified the information that contractors must include in the construction job postings. These changes include the following.

1. Eliminating the requirement that contractors post the job openings on a separate Internet job bank in addition to the other posting requirements. The posting on the Guam Job Bank will be widely available through the US.jobs Web site (formerly the National Labor Exchange). The Department determined that this posting was sufficient, and that additional Internet postings would be redundant.
2. Eliminating the requirement to advertise job opportunities in an American Samoa newspaper, in favor of Internet job

postings. This change was made because the Department determined that utilization of the American Samoa job bank for recruitment no longer requires supplementation by newspaper advertising, as a result of improvements made to that job bank.

3. Adding a statement to the job posting requirement concerning whether the contractor will pay for worker transportation to Guam. This change was made to conform the information included in advertisements placed under this recruitment standard with information commonly included in job orders submitted to the GDOL.
4. Clarifying the overtime pay requirement for the job postings. This change was made to clarify that contractors must include a statement regarding the availability and payment of overtime wages in their advertisements, if overtime is required by law.
5. Adding a statement to the job posting requirement regarding board, lodging, and fringe benefit information. This change was made to conform the information included in advertisements placed under this recruitment standard with information commonly included in job orders submitted to the GDOL.
6. Eliminating the requirement that the recruitment report describe the dates that the newspaper advertisements appeared in an American Samoa newspaper. The Department eliminated this requirement, because the removal of the

requirement to advertise in an American Samoa newspaper rendered this requirement moot.

7. Clarifying that contractors do not need to provide their recruitment report in a narrative form. This change was made in order to clarify that contractor recruitment reports may be in other formats, including a table or spreadsheet, rather than only in a narrative form.

As required by Section 2834(b)(2) of the NDAA for Fiscal Year 2010, the Department assessed, among other things, the opportunities to expand the recruitment of workers in the U.S. (including Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico), and the ability of labor markets to support the Guam realignment. This assessment is included in U.S. Department of Labor Report to Congress Required by the National Defense Authorization Act for Fiscal Year 2010 (July 29, 2011). The Department submitted this assessment to the Senate Committees on Health, Education, Labor, and Pensions, and Armed Services; and the House of Representatives Committees on Education and the Workforce, and Armed Services (this report can be found at the RegInfo.gov Web site listed at the end of this Federal Register Notice).

I. Guam Military Base Realignment Contractor Recruitment Standards

Guam military base realignment contractors must take the following actions to recruit U.S. workers.

1. At least 60 days before the start date of workers under a base realignment contract, contractors must
 - a. Submit a job posting via a completed Job Order (Guam Form GES 514) in person at the Guam Employment Service office, which is open Monday to Friday (except holidays) from 8 a.m. to 5 p.m. at 414 W. Soledad Avenue, Suite 400, Hagatna (for assistance call 671-475-7000). The job posting must be posted on the GDOL Job Bank for at least 21 consecutive days;
 - b. Submit a job posting with the state workforce agency's Internet job bank in American Samoa at <http://www.asjobs.org/job-search>, the Commonwealth of the Northern Mariana Islands at <https://marianaslabor.net/employer.asp>, and in the following states:
 - i. Alaska (www.jobs.state.ak.us);
 - ii. California (www.caljobs.ca.gov);
 - iii. Hawaii (www.hirenethawaii.com);
 - iv. Oregon (www.emp.state.or.us/jobs); and
 - v. Washington (<https://fortress.wa.gov/esd/worksource/Employment.aspx>).

For contractors needing assistance with job postings, additional contact information and a link to the required Guam form GES 514 are listed at www.jobbankinfo.org.

Each job posting must be posted for at least 21 consecutive days.

- c. Submit a job posting with an Internet-based job bank that
 - i. is national in scope, including the entire U.S., Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico;
 - ii. allows job postings for all occupations; and
 - iii. is free of charge for job seekers and their intermediaries in American Job Centers (formerly called One-Stop Career Centers) and the U.S. employment service delivery system nationwide.
- d. Where the occupation or industry is customarily unionized, contact the local union in Guam in writing to seek U.S. workers who are qualified and who will be available for the job opportunity.

2. Each job posting in (1)(a) through (d) must include, at a minimum, the following information.

- a. The contractor's name and appropriate contact information for applicants to inquire about the job opportunity, or

- to send applications and/or résumés directly to the employer;
- b. The geographic area of employment, with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;
 - c. A statement indicating whether or not the employer will pay for the worker's transportation to Guam;
 - d. If the employer provides it, a statement that daily transportation to and from the worksite(s) will be provided by the employer;
 - e. A description of the job opportunity with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;
 - f. If the employer makes on-the-job training available, a statement that it will be provided to the worker;
 - g. If required by law, a statement that overtime will be available to the worker and the wage offer for working any overtime hours;
 - h. The wage offer, and the benefits, if any, offered;
 - i. A statement that the position is temporary;
 - j. The total number of job openings the employer intends to fill; and

k. If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, a statement disclosing the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided.

3. During the 28-day recruitment period, which begins on the earliest job posting date, contractors must interview all qualified and available Guam and U.S. construction workers who have applied for the employment opportunity.

4. After the close of the recruitment period, and no later than 30 days before the start date of workers under a contract, the contractor must provide a report including the following information via e-mail to GDOL at ndaa.recruitment@dol.guam.gov, documenting its efforts to recruit U.S. workers from the U.S. and all U.S. territories.

a. Indicate all the recruitment approaches used to recruit realignment workers, including an identification of the Internet job banks where the postings occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the dates of each posting, and the job order or requisition number;

b. A copy of each job posting;

- c. How each job posting and response was handled, including
- i. the number of job applications received;
 - ii. the name of each applicant;
 - iii. the position applied for;
 - iv. the final employment determination for each applicant or job candidate; and
 - v. for each U.S. job applicant not hired, a description of the specific, lawful, job-related reason for rejecting the applicant for employment, which includes a comparison of the job applicant's skills and experience against the terms listed in the original job posting.

Contractors may provide much of this information in the form of a table or spreadsheet, so that instead of a narrative style the contractor need only check an appropriate box or provide a phrase, number or date (e.g., to indicate whether an individual reported for an interview or not, or lacked specific qualifications).

II. Departmental Recruitment Support Activities

Separate from the Contractor Recruitment Standards, ETA will facilitate a nationwide outreach and recruitment effort to maximize hiring of U.S. construction workers, including outreach to its workforce investment system. ETA will do the following:

- develop and issue a Training and Employment Notice (TEN), and hold an Internet-based training session ("Webinar") to inform contractors, state workforce agencies, state and local workforce investment boards, and American Job Centers (formerly called One-Stop Career Centers) of the anticipated construction employment opportunities on Guam and how these opportunities will be posted [interested individuals can automatically receive notice of the TEN by going to <http://wdr.doleta.gov/directives> and clicking on the last bullet, stating "To be added to the ETA Advisory electronic distribution list – click here," and interested individuals can automatically receive notice of the Webinar by registering for ETA's Workforce3One by going to <https://www.workforce3one.org/register.aspx>, then going to the fourth category (Newsletters and Updates) and checking the box for "Webinars/Live Events," and should also check both boxes under "Reemployment Works" in the preceding category (labeled "Join Communities")];
- develop telephone scripts for a Toll-Free Help Line directing job seekers to the GDOL job bank;
- ensure that Departmental offices – including the Office of Unemployment Insurance, the Office of Apprenticeship, the Office of Job Corps, the Veterans' Employment and Training Service, and the YouthBuild program – are informed of the construction employment opportunities; and

- brief pertinent inter-governmental and labor organizations (including the National Governors Association, National Conference of State Legislatures, and building trades unions), so that they can assist in spreading information about the U.S. worker outreach effort.

III. Public Burden Statement

The Office of Management and Budget (OMB) has approved the Department's request to extend the information collection (OMB Control Number 1205-0484) for three years, expiring September 30, 2015.

Persons are not required to respond to this collection of information unless it displays a valid OMB control number (1205-0484). The public reporting burden for this collection of information is estimated at three hours per job order, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Further information on this ICR can be accessed using control number 1205-0484 at the RegInfo.gov Web site at www.reginfo.gov/public/do/PRAMain. To do this, use the following instructions.

1. Go to the first "Select Agency" box and click on the drop-down arrow, and then select "Department of Labor." Then click on the "Submit" button to the right of the box.

2. Each entry lists the OMB Control Number at the top of the entry. Scroll down the screen until 1205-0484 appears (the entries are in numerical order).
3. Once you reach 1205-0484, click on the number immediately below that, the ICR Reference Number (not the Control Number itself).
4. To see the Information Collection notices themselves, click on "View Information Collection (IC) List" near the top of the page on the left. To see the Report to Congress, the MOU, the ICR Supporting Statement and other relevant documents, click on "View Supporting Statement and Other Documents" near the top of the page on the right.

SIGNED: at Washington, D.C. this 26th day of December, 2012.

Jane Oates

Assistant Secretary for Employment and Training

BILLING CODE 4510-FN-P

[FR Doc. 2013-00114 Filed 01/07/2013 at 8:45 am; Publication
Date: 01/08/2013]