

252.219-7004. The rule reflects changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106). The final rule differs from the interim rule in that it amends the clause at 252.219-7004 to clarify instructions for contractor submission of Standard Form 295, Summary Subcontract Report.

Item XII—Bond Waivers (DFARS Case 96-D019)

This final rule removes DFARS 219.808, 219.811, and 252.219-7007, which pertained to waiver of Miller Act requirements for performance and payment bonds under 8(a) construction contracts. The statutory authority for waiver of these requirements (Section 813 of Public Law 102-190) applied only to contracts awarded during fiscal years 1992 through 1994.

Item XIII—Small Business Competitiveness Demonstration Program (DFARS Case 96-D025)

This final rule amends DFARS 219.1005 to remove dredging from the list of designated industry groups under the Small Business Competitiveness Demonstration Program. Dredging had been added to the list as part of a test program established under Section 722 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366). The statutory authority for the test program expired on September 30, 1996.

Item XIV—Pilot Mentor-Protégé Program (DFARS Case 96-D317)

This final rule was issued by Departmental Letter 96-018, effective October 18, 1996 (61 FR 54346, October 18, 1996). The rule amends DFARS 219.7104 and Appendix I to implement Section 802 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Section 802: (1) Extends to September 30, 1998, the date by which an interested company must apply for participation as a mentor firm under the DoD Pilot Mentor-Protégé Program; and (2) extends to September 30, 1999, the date by which a mentor firm must incur costs in order to be eligible for reimbursement under the Program.

Item XV—Nondomestic Construction Materials (DFARS Case 97-D009)

This final rule removes the clause at DFARS 252.225-7004, Nondomestic Construction Materials, and the corresponding prescriptive language at 225.205. The DFARS clause has been

superseded by the clauses at FAR 52.225-5, Buy American Act—Construction Materials, and 52.225-15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, as amended by Federal Acquisition Circular 90-46.

Item XVI—Petroleum Products from Caribbean Basin Countries (DFARS Case 96-D312)

The interim rule published as Item XI of DAC 91-11 is converted to a final rule without change. The rule amended DFARS 225.403 to fully implement Section 8094 of the National Defense Appropriations Act for Fiscal Year 1994 (Public Law 103-139). Section 8094 requires DoD to consider all qualified bids from eligible countries under the Caribbean Basin Economic Recovery Act as if they were offers from designated countries under the Trade Agreements Act. The rule also amended DFARS 225.403-70 and 252.225-7007 to clarify that the definition of Caribbean Basin country end products includes petroleum and any end product derived from petroleum.

Item XVII—Metalworking Machinery—Trade Agreements (DFARS Case 96-D030)

This final rule was issued by Departmental Letter 97-005, effective January 17, 1997 (62 FR 2615, January 17, 1997). The rule amends DFARS 225.403-70 to remove the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534. As a result, all metal working machinery products in Federal Supply Group 34 are subject to the trade agreements acts.

Item XVIII—Authority To Waive Foreign Purchase Restrictions (DFARS Case 96-D319)

This interim rule supersedes the interim rule issued by Departmental Letter 97-006 on January 17, 1997. The rule amends DFARS 225.872, 225.70, and clauses at 252.225-7016 and 252.225-7029 to implement the waiver by the Under Secretary of Defense (Acquisition and Technology) of the foreign source restrictions of 10 U.S.C. 2534(a), for the acquisition of defense items manufactured in a qualifying country. This waiver is authorized by 10 U.S.C. 2534(d)(3), as amended by section 810 (the McCain Amendment) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201).

Item XIX—Foreign Machine Tools and Powered and Non-Powered Valves (DFARS Case 96-D023)

This final rule was issued by Departmental Letter 96-019, effective November 15, 1996 (61 FR 58488, November 15, 1996). The rule amends DFARS Subpart 225.70, and removes the clause and provision at 252.225-7017 and 252.225-7040, to reflect the expiration of the restriction on the acquisition of machine tools and powered and non-powered valves at 10 U.S.C. 2534. Related amendments are made at 212.504(a) and 252.212-7001(b).

Item XX—Preference for U.S. Firms on MILCON Overseas Construction (DFARS Case 96-D328)

The interim rule issued by Departmental Letter 97-008, on January 17, 1997, is converted to a final rule without change. The rule amends DFARS 225.7000, 225.7003, 236.274, and 236.570, and adds a new provision at 252.236-7010, to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1997 (Public Law 104-196). Section 112 provides a 20 percent evaluation preference for U.S. firms on contracts estimated to exceed \$1,000,000 for military construction projects in the U.S. territories and possessions in the Pacific and on Kwajalein atoll, or in countries bordering the Arabian Gulf.

Item XXI—Restriction on MILCON Overseas Architect-Engineer Contracts (DFARS Case 96-D329)

The interim rule issued by Departmental Letter 97-008, on January 17, 1997, is converted to a final rule without change. The rule adds new sections at DFARS 225.7004 and 236.602-70, amends 236.102 and 236.609-70, and adds a new provision at 252.236-7011, to implement Section 111 of the Military Construction Appropriations Act for Fiscal Year 1997 (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 U.S. firms or U.S. firms in joint venture with host nation firms.

Item XXII—Application of Berry Amendment (DFARS Case 96-D333)

This interim rule was issued by departmental Letter 97-009, effective February 7, 1997 (62 FR 5779, February 7, 1997). The rule amends DFARS 225.7002, 252.212-7001, 252.225-7012, and 252.225-7014; adds a new section

DAR Case 76-0329

Case Manager

(b)(6)

Date **Action**

9-30-96 Case opened

10-22-96 Report of counts. com

10-30-96 Agree to interim rule

1-17-97 Interim rule published (62 FR 2857)
O.L. 97-008

96-D329

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)

[FR Doc. 97-1041 Filed 1-16-97; 8:45 am]

BILLING CODE 5000-04-M

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,

Overseas Architect-Engineer Services—Restriction to United States firms.

4. Section 236.602-70 is added to read as follows:

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

In accordance with Section 111 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, A-E 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 Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

5. Section 236.609-70 is amended by revising the title; by redesignating paragraphs (a)(1) and (2)(2) as paragraphs (a)(1)(i) and (a)(1)(ii), respectively; by redesignating paragraph (a) introductory text as paragraph (a)(1); by redesignating paragraph (b) as

paragraph (a)(2); and by adding a new paragraph (b) to read as follows:

236.609-70 Additional provisions and clauses.

* * * * *

(b) Use the provision 252.236-7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A-E contracts 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 Gulf.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.236-7011 is added to read as follows:

252.236-7011 Overseas Architect-Engineer Services—Restriction to United States Firms.

As prescribed in 236.609-70(b), use the following provision:

Overseas Architect-Engineer Services—Restriction to 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 12 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) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

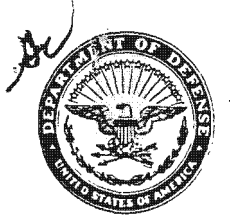
(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

[FR Doc. 97-1042 Filed 1-16-97; 8:45 am]

BILLING CODE 5000-04-M

Info



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000



January 17, 1997

ACQUISITION AND
TECHNOLOGY

DP (DAR)

In reply refer to
DFARS Cases: 96-D328/96-D329
D. L. 97-008

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: Restriction on MILCON Overseas Architect-Engineer (A-E)
Contracts and Preference for U.S. Firms on MILCON Overseas
Construction

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 111 and 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 111 restricts award of A-E contracts estimated to exceed \$500,000, for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, to U.S. firms or U.S. firms in joint venture with host nation firms. Section 112 provides a 20 percent preference for U.S. firms on all contracts estimated to exceed \$1,000,000 for military construction projects in the U.S. territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



JAN 23 1997

DFARS Case 96-D328
Preference for U.S. Firms on MILCON Overseas Construction
Contracts

DFARS Case 96-D329
Restriction on MILCON Overseas A-E Contracts

Interim Rule

PART 225—FOREIGN ACQUISITION

* * * * *

**SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER
STATUTORY RESTRICTIONS ON FOREIGN PURCHASES[ACQUISITION]**

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products [and services], imposed by ~~DoD~~[Defense] A[a]ppropriations and A[a]uthorization A[a]cts and other statutes. Refer to the A[a]cts to verify current applicability of the restrictions.

* * * * *

225.7003 Reserved[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).]

225.7004 Reserved[Restriction on overseas architect-engineer services].

For restriction on award of architect-engineer contracts to be performed in Japan, 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

SUBPART 236.1—GENERAL

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, Overseas Architect-Engineer Services—Restriction to United States Firms.

* * * * *

SUBPART 236.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

* * * * *

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.

[(b) When a technical working agreement with a foreign government is required for a construction contract—

(a[1]) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command to participate in the negotiations.

(b[2]) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

(1[i]) Acquisition of all necessary rights;

(2[ii]) Expeditious, duty-free importation of labor, material, and equipment;

(3[iii]) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(4[iv]) Applicability of workers' compensation and other labor laws to citizens of the United States, the host country, and other countries;

(5[v]) Provision of utility services;

(6[vi]) Disposition of surplus materials and equipment;

(7[vii]) Handling of claims and litigation; and

(8[viii]) Resolution of any other foreseeable problems which can appropriately be included in the agreement.

* * * * *

SUBPART 236.5—CONTRACT CLAUSES

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.]

* * * * *

SUBPART 236.6-ARCHITECT-ENGINEER SERVICES

* * * * *

236.602 Selection of firms for architect-engineer contracts.

* * * * *

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

In accordance with Section 111 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, A-E contracts funded by military construction appropriations that are estimated to exceed \$500,000 and are to be performed in Japan, any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.]

* * * * *

236.609-70 ~~Option for supervision and inspection services~~
[Additional provision and clause].

(a)[(1)] Use the clause at 252.236-7009, Option for Supervision and Inspection Services, in solicitations and contracts for A-E services when-

(1[i]) The contract will be fixed price; and

(2[ii]) Supervision and inspection services by the A-E may be required during construction.

(b)[2]) Include the scope of such services in Appendix A of the contract.

[(b) Use the provision at 252.236-7011, Overseas Architect-Engineer Services-Restriction to United States Firms, in solicitations for A-E contracts that are estimated to exceed \$500,000 and are to be performed in Japan, any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.]

* * * * *

PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

[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)]

[252.236-7011 Overseas Architect-Engineer Services--Restriction to United States Firms.

As prescribed in 236.609-70(b), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES--RESTRICTION TO
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) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)]

TRANSMITTAL FORM (8/90)

CASE MANAGER (b)(6) DATE: 3-26-97

DAR Case No: 96-11329 DAR Case Title: Overseas Military Construction - Preference for United States Firms

DFARS Cite(s): 225.70, 236.6, 252.236-7011.

Check One: Final Interim Info

DAC Intro Item:

The interim rule issued by Departmental Letter 97-008 on January 17, 1997, is converted to a final rule without change. The rule amends DFARS 225.70 and 236.6, ~~and~~ and adds the clause at 252.236-7011, to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Pub. L. 104-196). Section ~~111~~ ~~provides~~ Public Comment: (see attached)

- (Interim Rule) Comments invited _____ day comment period.
- (Interim/Final Rule) Does not have significant effect beyond internal operating procedures or significant cost or administrative impact on contractors.
- (Final Rule) Comments were requested on 1-17-97, 62 FR 2857.

Reg Flex:

- (Interim/Final Rule) Does not apply. Rule does not constitute significant revision.
- (Final Rule) Applies. A final RF analysis is attached.
- (Final rule) DoD certifies that final rule will not have significant economic impact because see attached
- (Interim Rule) Applies. May have significant economic impact because _____
- Initial RF analysis forwarded to SBA.
- Initial RF analysis delayed because _____ but will be forwarded by _____
- (Interim Rule) Applies but not expected to have significant economic impact. No RF analysis

Paperwork Reduction:

- (Interim/Final Rule) No information collection requirements.
- (Interim Rule) Applies. OMB approval requested.
- (Final Rule) Applies. OMB approved. Control number _____

Deviations:

- No
- Yes. Deviation approval request attached.

Interim Rule:

- Determination of Urgency attached

**Overseas Architect-Engineer Services—
Restriction to United States firms.**

4. Section 236.602-70 is added to read as follows:

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

In accordance with Section 111 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, A-E 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 Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

5. Section 236.609-70 is amended by revising the title; by redesignating paragraphs (a)(1) and (2)(2) as paragraphs (a)(1)(i) and (a)(1)(ii), respectively; by redesignating paragraph (a) introductory text as paragraph (a)(1); by redesignating paragraph (b) as

paragraph (a)(2); and by adding a new paragraph (b) to read as follows:

236.609-70 Additional provisions and clauses.

* * * * *

(b) Use the provision 252.236-7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A-E contracts 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 Gulf.

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

6. Section 252.236-7011 is added to read as follows:

**252.236-7011 Overseas Architect-
Engineer Services—Restriction to United
States Firms.**

As prescribed in 236.609-70(b), use the following provision:

**Overseas Architect-Engineer Services—
Restriction to 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 12 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) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

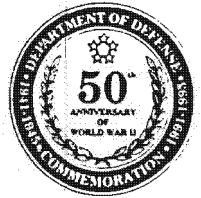
[FR Doc. 97-1042 Filed 1-16-97; 8:45 am]

BILLING CODE 5000-04-M



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000
December 30, 1996



ACQUISITION AND
TECHNOLOGY

DP (DAR)

In reply refer to
DFARS Cases: 96-D328/96-D329

Mr. Bruce McConnell
Chief, Information Policy and Technology Branch
Office of Information and Regulatory Affairs
Room 3235 NEOB
Washington, DC 20503

Dear Mr. McConnell:

We are preparing to publish an interim rule to amend language in the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 111 and 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 111 restricts award of architect and engineer contracts estimated to exceed \$500,000, for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, to U.S. firms or U.S. firms in joint venture with host nation firms. Section 112 provides a 20 percent preference for U.S. 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.

We are enclosing a courtesy copy of the DFARS language and would appreciate your clearance to proceed with publication.

Sincerely,

Sinda W. Nelson
for

D. S. Parry
Captain, SC, USN
Director, Defense Acquisition
Regulations Council

Enclosure



level of an agency, not meant for repetitive use, but intended to meet the needs of an individual acquisition and, thus, impractical to include in either an agency or suborganization acquisition regulation. (See 1.301(c).)

(ii) Supplemental provisions or clauses published in agency acquisition regulations shall be in full text and the prescription for the use of each shall be included. Supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered except that—

(A) If it is included in an agency acquisition regulation that is published in the Federal Register and is codified in Title 48, Code of Federal Regulations (48 CFR), the number shall be preceded by the chapter number within 48 CFR assigned by the CFR staff; and

(B) The sequential number shall be “70” or a higher number (see 1.303).

(iii) The sequential number at the end of the number of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates the subsection location of the provision or clause in Subpart 52.2 of the agency acquisition regulation that contains its full text. If, for example, an agency acquisition regulation contains only one provision followed by only one clause supplementing the FAR in its section 52.236 (Construction and Architect-Engineer Contracts), then the sequential numbers would be “70” for the provision and “71” for the clause.

(c) *Prescriptions.* Each provision or clause in Subpart 52.2 is prescribed at that place in the FAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other FAR locations.

(d) *Prefaces.* Within Subpart 52.2, each provision or clause is prefaced with (1) a cross-reference to the location in the FAR subject text that prescribes its use, and (2) directions for inserting it in solicitations and/or contracts.

(e) *Matrix.*

(1) The matrix in Subpart 52.3 contains a column for each principal type and/or purpose of contract (e.g., fixed-price supply, cost reimbursement research and development). The matrix lists the—

- (i) Required solicitation provisions;
- (ii) Required-when-applicable solicitation provisions;
- (iii) Optional solicitation provisions;
- (iv) Required contract clauses;
- (v) Required-when-applicable contract clauses;

and

(vi) Optional contract clauses.

(2) For each provision or clause listed, the matrix provides information on—

- (i) Whether incorporation by reference is or is not authorized;
- (ii) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;
- (iii) Its number;
- (iv) The citation of the FAR text that prescribes its use; and
- (v) Its title.

(3) Since the matrix does not provide sufficient information to determine the applicability of a provision or clause in the “required-when-applicable” and “optional” categories, contracting officers shall refer to the FAR text (cited in the matrix) that prescribes its use.

(4) The FAR matrix may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.

(f) *Dates.* Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated; e.g., (DEC 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

52.102 Incorporating provisions and clauses.

52.102-1 Incorporation by reference.

(a) Except as specified in 52.102-2, provisions and clauses may be incorporated by reference in solicitations and/or contracts if they are prescribed in—

- (1) The FAR and are authorized to be incorporated by reference (see Subpart 52.3); or
- (2) An agency acquisition regulation published by—
 - (i) The Secretary of Defense for use throughout the Department of Defense (DOD); or
 - (ii) The head of an agency outside the DOD for agency-wide use.

(b) The provisions and clauses referred to in 52.102-1(a) should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they (1) are used with one or more alternates or on an optional basis, (2) are prescribed on a “substantially as follows” or “substantially the same as” basis; *provided*, that they are used verbatim, or (3) require modification or the insertion by the Government of fill-in material (see 52.104). However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Provisions or clauses may not be incorporated by

reference by being listed in the (1) provision at 52.252-3, Alterations in Solicitations, or (2) clause at 52.252-4, Alterations in Contract.

52.102-2 Incorporation in full text.

(a) A provision or clause shall be incorporated in solicitations and/or contracts in full text if it—

- (1) Requires completion by the offeror or prospective contractor;
- (2) Is a FAR provision or clause that will be used with an authorized deviation (see Subpart 1.4);
- (3) Is a FAR provision or clause that is not authorized to be incorporated by reference (see Subpart 52.3);
- (4) Is prescribed for use in an agency acquisition regulation published at levels below those specified in 52.102-1(a)(2);
- (5) Is a special provision or clause of the type described in 52.101(b)(2)(i)(C);
- (6) Will be used in a specific acquisition or class of acquisitions covered by a written determination of the chief of the contracting office to restrict the use of incorporation by reference for valid reasons; or
- (7) Is prescribed on a “substantially as follows” or “substantially the same as” basis in the FAR or an agency acquisition regulation specified in 52.102-1(a)(2), but will not be used verbatim.

(b) Provisions and clauses of the type described in 52.101(b)(2)(i)(C), if developed by an organizational element below that of the agency headquarters level, shall be subject to agency oversight through the agency procedure required by 1.202.

(c) Provisions completed as annual representations and certifications are not required to be incorporated in solicitations in full text.

52.103 Identification of provisions and clauses.

(a) Whenever any FAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the FAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert “(DEVIATION)” after the date. Solicited firms and contractors will be advised of the meaning of this insertion through the use of the (1) provision at 52.252-5, Authorized Deviations in Provisions, or (2) clause at 52.252-6, Authorized Deviations in Clauses. The above mentioned provision and clause are prescribed in 52.107(e) and (f).

(b) Any provision or clause that supplements the FAR whether it is incorporated by reference or in full text shall be clearly identified by number, title, date, and name of the regulation. When a supplemental provision or clause is used with an authorized deviation, insert “(DEVIATION)” after the name of the regulation.

(c) A provision or clause of the type described in

52.101(b)(2)(i)(C) shall be identified by the title, date, and the name of the agency or suborganization within the agency that developed it.

(d) Except for provisions or clauses covered by 52.103(c), the following hypothetical examples illustrate how a provision or clause that supplements the FAR shall be identified when it is incorporated in solicitations and/or contracts by reference or in full text:

(1) If Part 14 (Sealed Bidding) of the X Agency Acquisition Regulation, published in the Federal Register and codified as Chapter 99 in 48 CFR, prescribes the use of a provision entitled “Bid Envelopes,” dated October 1983, and that provision is sequentially the first provision or clause appearing in Section 52.214 of the X Agency Acquisition Regulation, then the identification of that provision shall be “9952.214-70—Bid Envelopes (OCT 1983).”

(2) Assume that Y, a major organizational element of the X Agency, is authorized to issue the Y Acquisition Regulation, which is not published in the Federal Register and codified in 48 CFR. If Part 36 (Construction and Architect-Engineer Contracts) of the Y Acquisition Regulation prescribes the use of a clause entitled “Refrigerated Display Cases,” dated March 1983, pertaining to a specialized type of construction work, and that clause is sequentially the second provision or clause appearing in Section 52.236 of the Y Acquisition Regulation, then the identification of that clause shall be “52.236-71—Refrigerated Display Cases (MAR 1983)—Y Acquisition Regulation.”

52.104 Procedures for modifying and completing provisions and clauses.

(a) Provisions and clauses shall not be modified unless the FAR authorizes their modification. Any such authorizations are contained in the provision or clause preface in Subpart 52.2; for example—

(1) “In the following clause, the stated 60-day period may be varied from 30 to 90 days;” or

(2) “Task Order” or other appropriate designation may be substituted for “Schedule” wherever that word appears in the clause.”

(b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below the title of the provision or clause identifying to the lowest level necessary (e.g., paragraph, sentence, word), to clearly indicate what is being modified.

(c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.

(d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information directly below the title of the provision or clause identifying to the lowest level necessary to clearly indicate the blanks being filled in.

PART 225—FOREIGN ACQUISITION**225.7004 [Removed and Reserved]**

3. Section 225.7004 is removed and reserved.

225.7004-1 through 225.7004-6 [Removed]

4. Sections 225.7004-1 through 225.7004-6 are removed.

5. Section 225.7005 is revised to read as follows:

225.7005 Waiver of certain restrictions.

Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 may be waived as follows:

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured in the United States or Canada are not available.

(5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(6) Application of the restriction is not in the national security interests of the United States.

(7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

6. Section 225.7007-4 is revised to read as follows:

225.7007-4 Waiver.

The waiver criteria at 225.7005 apply to this restriction.

7. Section 225.7010-3 is revised to read as follows:

225.7010-3 Waiver.

The waiver criteria at 225.7005 apply to this restriction.

8. Section 225.7016-3 is revised to read as follows:

225.7016-3 Waiver.

The waiver criteria at 225.7005 apply to this restriction.

9. Section 225.7022-3 is revised to read as follows:

225.7022-3 Waiver.

The waiver criteria at 225.7005 apply only to the restriction of 225.7022-1(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.212-7001 [Amended]**

10. Section 252.212-7001 is amended by revising the clause date to read "(NOV 1996)" and by removing the entry "_____ 252.225-7017 Preference for United States and Canadian Valves and Machine Tools (10 U.S.C. 2534(c)(2)).".

252.225-7017 [Removed and Reserved]

11. Section 252.225-7017 is removed and reserved.

252.225-7040 [Removed]

12. Section 252.225-7040 is removed.

[FR Doc. 96-29331 Filed 11-14-96; 8:45 am]

BILLING CODE 5000-04-M

48 CFR Part 225**[DFARS Case 96-D331]****Defense Federal Acquisition Regulation Supplement; Ball and Roller Bearings**

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the extension of a statutory restriction on the acquisition of ball and roller bearings.

EFFECTIVE DATE: November 15, 1996.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 96-D331 in all correspondence related to this issue..

SUPPLEMENTARY INFORMATION:**A. Background**

DoD acquisition of ball and roller bearings is restricted to domestic sources by 10 U.S.C. 2534(a)(5), until October 1, 2000, and by Section 8099 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104-61) and Section 8082 of the Fiscal Year 1997 Defense Appropriations Act (Pub. L. 104-208). This final rule amends DFARS 225.7019-1(b) to reflect the extension of the appropriations act restriction beyond fiscal year 1996.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96-D331 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7019-1 is amended by revising paragraph (b) to read as follows:

225.7019-1 Restrictions.

* * * * *

(b) In accordance with Section 8099 of Public Law 104-61 and similar sections in subsequent Defense appropriations acts, do not use fiscal year 1996 or subsequently appropriated funds to acquire ball and roller bearings other than those produced by a domestic source and of domestic origin, i.e., bearings and bearing components manufactured in the United States or Canada.

[FR Doc. 96-29329 Filed 11-14-96; 8:45 am]

BILLING CODE 5000-04-M

ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

MEMORANDUM FOR DIRECTOR DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: FAR Case 96-325 and DFARS Cases 96-D320/D328/D329

Thank you for the opportunity to review the subject cases. This office is unable to concur in the cases as they are currently drafted. To the extent that these comments are late, and the cases have already been released for publication as proposed or interim rules, please consider our comments as part of the public comment process. Our specific concerns are addressed below.

FAR Case 96-325, Compensation of Certain Contractor Personnel. This case purports to implement section 809 of the FY 97 Defense Authorization Act. *Halach*

Procedurally, we do not understand why the Team did not take a clean sheet approach to implementing this significantly changed provision and it does not appear that the public played any role at framing this implementation. We therefore believe that this should be published as a proposed rule. We can internally direct that work on developing annual overhead rates will continue but that no overhead rates will be approved before the rule becomes final.

Substantively, the statutory language leaves great discretion to the Department in determining how we define two critical terms, Senior Executive Officer and "individuals in senior management positions." It is unclear from the team's report why they have chosen to define both of these terms in a restrictive manner. I understand that establishing a fixed number of Senior Executive Officers and "individuals in senior management positions" is easier to administer for the Department, but it does not appear that in all circumstances it will be the correct solution both for the government and industry, nor does it appear to address Congress' underlying concern vis a vis those individuals whose salaries should be capped. We prefer a definition of these terms which compels a company by company review of senior management and a determination on a case by case basis, first by the company and then reviewed by the contracting officer, on who should be a Senior Executive Officer or an "individual in senior management". This review can be accomplished in the same process that overhead rates are established and approved. This will actually give both government and industry more discretion in determining who should properly be identified as subject to the cap and more accurately implement Congress' intent. A fixed number without justification is arbitrary, and in the absence of a sound justification, capricious.

DFARS Case 96-D320, Notice of Termination. This case purports to implement section 824 of the FY 97 Defense Authorization Act. It implements the provisions in a clause with no reference or definition in the substantive provisions of the DFARS itself. We recommend that the team include language in DFARS 249 that addresses the requirement as well. *LS*



William

DFARS Cases 96-D328 and D329, Preference for US Firms on MILCON Overseas Construction Contracts and Restriction on MILCON Overseas Architect-Engineer (A-E) Contracts. These cases purport to implement sections 11 and 112 of the FY96-97 Military Construction Appropriations Act. The team has not explained its rationale for including a requirement that the firms, to fit within the preference, must hire US citizens in key management positions. The statute does not require a limitation on employment of key management positions to US citizens. Why did the team feel this was necessary and what impact will have this have on effecting Congress' intent and our ability to implement? What happens if individuals in "key management positions" turn over in the process or the company reorganizes? The team also did not include a definition of key management. Query, should the definitions in this case be the same as the definitions in FAR Case 96-325? Absent a compelling reason to the contrary, we think so. We think the team needs to rework this case in light of our comments.



David A. Drabkin
Acting Deputy Under Secretary of Defense
(Acquisition Reform)



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000



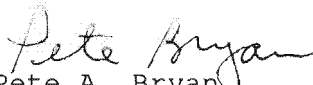
October 28, 1996

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATIONS COUNCIL

SUBJECT: Preference of U.S. Firms on MILCON Overseas Construction Contracts (DFARS Case 96-D328) and Restriction on MILCON Overseas Architect-Engineer (A-E) Contracts (DFARS Case 96-D329)

I have reviewed your memorandum of October 25, 1996, and the draft interim rules required to implement restrictions on award of overseas military construction and A-E contracts to foreign firms, as required by Sections 111 and 112 of the FY96 and 97 Military Construction Appropriations Acts.

I concur with the interim rules as drafted.


Pete A. Bryan
Deputy Director, Defense
Procurement (Foreign Contracting)



Defense Acquisition Regulations Directorate
Memo

OCT 25 1996

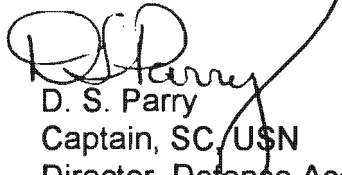
To: Mr. Pete Bryan (FC)
Mr. David Drabkin (AR)

Subject: Preference of U.S. Firms on MILCON Overseas Construction Contracts (DFARS Case 96-D328) and Restriction on MILCON Overseas Architect-Engineer (A-E) Contracts (DFARS Case 96-D329)

The attached draft interim rules (Atch 1) implement restrictions on award of overseas military construction and A-E contracts to foreign firms, as required by Sections 111 and 112 of the Fiscal Years 1996 and 1997 Military Construction Appropriations Acts (Atch 2).

These rules add cross references in 225.70; add a definition for "United States firm" at 236.106, applicable to both military construction and A-E contracts; and add solicitation provisions to notify the offeror of the restrictions and confirm the status of the offeror.

The DAR Council plans to discuss these cases on October 30, 1996. We invite any comments you may have. Our case manager is Ms. Amy Williams, 602-0131.



D. S. Parry
Captain, SC, USN
Director, Defense Acquisition
Regulations Council

Attachments

DFARS Case 96-D328

Preference for U.S. Firms on MILCON Overseas Construction Contracts
PART 225-FOREIGN ACQUISITION

* * * * *

SUBPART 225.70-AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER
STATUTORY RESTRICTIONS ON FOREIGN PURCHASES[ACQUISITION]

225.7000 Scope of Subpart.

(a) This subpart contains restriction on the acquisition of foreign products [and services], imposed by ~~DoD~~[Defense] Appropriations and Authorization Acts and other statutes. Refer to the A[a]cts to verify current applicability of the restrictions.

* * * * *

225.7003 Reserved-[Restriction on overseas military construction.

For restriction on award to foreign firms 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(b).]

* * * * *

PART 236-CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 236.1-GENERAL

236.102 Definitions.

* * * * *

[(4) "United States firm," as used in this part, means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of two 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
- (iii) The firm employs United States citizens in key management positions.]

* * * * *

SUBPART 36.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

* * * * *

236.274 Construction in foreign countries.

[(a)] When a technical working agreement with a foreign government is required for a construction contract—

(a[1]) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command to participate in the negotiations.

(b[2]) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

(1[i]) Acquisition of all necessary rights;

(2[ii]) Expeditious, duty-free importation of labor, material, and equipment;

(3[iii]) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(4[iv]) Applicability of workers' compensation and other labor laws to citizens of the United States, the host country, and other countries;

(5[v]) Provision of utility services;

(6[vi]) Disposition of surplus materials and equipment;

(7[vii]) Handling of claims and litigation; and

(8[viii]) Resolution of any other foreseeable problems which can appropriately be included in the agreement.

[(b) 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 bid from a United States firm exceeds the lowest responsive and responsible bid of a foreign contractor by more than 20 percent.

* * * * *

SUBPART 236.5—CONTRACT CLAUSES

236.570 Additional provisions and clauses.

* * * * *

[(c) Use the provision at 252.236-70XX, Overseas Military Construction - Preference for United States Firms, in 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

**[252.236-70XX 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 (DATE)**

(a) *Definition.*

“United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;**
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of two 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**
- (iii) The firm employs United States citizens in key management positions.**

(b) *Evaluation.* Offers from firms which do not qualify as United States firms will be evaluated by adding 20 percent to the offer.]

(c) *Status.* The offeror shall check the appropriate box. The offeror _____ is, _____ is not a United States firm.

(End of provision)]

**DFARS Case 96-D329
Restriction on MILCON Overseas A-E Contracts**

PART 225—FOREIGN ACQUISITION

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES[ACQUISITION]

225.7004 ~~Reserved.~~ {Restriction on machine tools and powered and non-powered valves deleted by 96-D023} [Restriction on overseas architect-engineer services.

For restriction on award to foreign firms of architect-engineer contracts to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf, see 236.602-70.]

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 236.6—ARCHITECT-ENGINEER SERVICES

236.602 Selection of firms for architect-engineer contracts.

236.602-70 Restriction on award of overseas A-E contracts to foreign firms.

[In accordance with Section 111 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction that are estimated to exceed \$500,000 and are to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

236.609-70 ~~Option for supervision and inspection services~~[Additional provisions and clauses].

(a)[(1)] Use the clause at 252.236-7009, Option for Supervision and Inspection Services, in solicitations and contracts for A-E services when—

(+ [i]) The contract will be fixed price; and

(= [ii]) Supervision and inspection services by the A-E may be required during construction.

(b)[2]) Include the scope of such services in Appendix A of the contract.

[(b) Use the provision 252.236-70YY, Overseas Architect-Engineer Services - Restriction to United States Firms, in architect-engineer contracts that are estimated to exceed \$500,000 and are to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf.]

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

[252.236-70YY Overseas Architect-Engineer Services - Restriction to United States Firms. As prescribed in 236. 609-70(b), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES - RESTRICTION TO UNITED STATES FIRMS (DATE)

(a) *Definition.*

“United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;**
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of two 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**
- (iii) The firm employs United States citizens in key management positions.**

(b) *Restriction.* Military construction appropriations acts restrict award of this contract to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of this offer, that it is a United States firm or a joint venture of United States firms and host nation firms.

(End of provision)]

Pub. L. 104-32 (FY 96 Military Construction Appropriations Act)

SEC. 111. None of the funds appropriated in Military Construction Appropriations Acts may be obligated for architect and engineer contracts estimated by the Government to exceed \$500,000 for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.

SEC. 112. None of the funds appropriated in Military Construction Appropriations Acts for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, may be used to award any contract estimated by the Government to exceed \$1,000,000 to a foreign contractor: [Italic->] Provided, [<-Italic] That this section shall not be applicable to contract awards for which the lowest responsive and responsible bid of a United States contractor exceeds the lowest responsive and responsible bid of a foreign contractor by greater than 20 per centum.

Atch 2

FAX

TO: (b)(6) FAX NR. (b)(2)
PHONE NR. (b)(2)

DATE: 10-24-96

7 Pages including this transmittal sheet

SUBJECT: DFARS Cases 96-D327, D328, D396

MESSAGE:

- I am proposing some changes and additions to the draft rules submitted by the Construction Committee.
- DAC 91-10 changed the baseline implementing a final rule under DFARS Case 95-D024.
 - I recommend a solicitation provision for cases 96-D328 and D329 to notify offerors of the requirement and provide a way for them to confirm their status.
 - I recommend a cross reference in subpart 25.70.

FROM: (b)(6) Defense Acquisition Regulations

Directorate, PDUSD (A&T) DP/DAR, (b)(2) 3, FAX (b)(2)

(b)(2)

I have cited the FY96 Military Construction Appropriations Act because that is the first year in which the restriction occurred in its present form (including Arabian Gulf countries).

PLEASE DELIVER IMMEDIATELY

If you have any comments with regard to these proposed revisions, please let me know.

(b)(6) (b)(7)(C)

FAX

TO: DAR Council FAX NR. _____
PHONE NR. _____

DATE: 10-24-96

7 Pages including this transmittal sheet

SUBJECT: DFARS Cases 96-D327, 96-D328, 96-D329

MESSAGE: This is an advance copy of some changes I am proposing to the draft rules submitted by the construction Committee - to be discussed 10-30-96.

- DAC 91-10 changed the baseline, implementing a final subunder, DFARS Case 95-D024 (96-D327)
- I have cited the FY 96 Military Appropriations Act, because it is the first year in which the restriction occurred in its present form (including Arabian Gulf countries)

FROM: (b)(6) Defense Acquisition Regulations Directorate, PDUSD (A&T) DP/DAR, (b)(2) FAX (b)(2)

(b)(2) - I have added cross-references in 27S.70 and solicitation provisions. (96-D328, 96-D329)

PLEASE DELIVER IMMEDIATELY

Case Management Record

Discussion Handout

DFARS Case 96-D329		Date	March 24, 1997
Title Restriction on MILCON Overseas A-E Contracts			
Priority 1	Submitted By (b)(6)		Origination Code L
Case Manager (b)(6)		Case References	
FAR Cites		DFARS Cites 225.70, 236.6, 252.236	
Cognizant Committees Construction			
Coordination FC			
Recommendation Convert to final rule without change			
<p>This case was opened on September 30, 1996, to implement Section 111 of the FY 97 Military Construction Appropriations Act (Pub. L. 104-196). Section 111 provides that no funds may be obligated for architect and engineer contracts estimated by the Government to exceed \$500,000 for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, unless such contracts are awarded to U.S. firms, or U.S. firms in joint venture with host nation firms.</p> <p>An interim rule was published for public comment (62 FR 2856), with comments due on or before March 18, 1997. No public comments were received.</p> <p>However, verbal inquiry was received as to the location of the "Arabian Gulf," and whether we meant the Persian Gulf or the Arabian Sea. Since the Gulf War, the Government now generally uses the term "Arabian Gulf" to identify the Gulf bordered by Saudi Arabia, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Iraq, and Iran (see attached).</p>			

MAR 24 1997

Largest seas

Name	Area*	
	(km ²)	(sq mi)
Coral Sea	4 791 000	1 850 200
Arabian Sea	3 863 000	1 492 000
S China (Nan) Sea	3 685 000	1 423 000
Mediterranean Sea	2 516 000	971 000
Bering Sea	2 304 000	890 000
Bay of Bengal	2 172 000	839 000
Sea of Okhotsk	1 590 000	614 000
Gulf of Mexico	1 543 000	596 000
Gulf of Guinea	1 533 000	592 000
Barents Sea	1 405 000	542 000
Norwegian Sea	1 383 000	534 000
Gulf of Alaska	1 327 000	512 000
Hudson Bay	1 232 000	476 000
Greenland Sea	1 205 000	465 000
Arafura Sea	1 037 000	400 000
Philippine Sea	1 036 000	400 000
Sea of Japan	978 000	378 000
E Siberian Sea	901 000	348 000
Kara Sea	883 000	341 000
E China Sea	664 000	256 000
Andaman Sea	565 000	218 000
North Sea	520 000	201 000
Black Sea	508 000	196 000
Red Sea	453 000	175 000
Baltic Sea	414 000	160 000
Arabian/Persian Gulf	238 000	92 200
Gulf of St Lawrence	238 300	92 000

Oceans are excluded.

*Areas are rounded to nearest 1000 km²/sq mi.

SAUDI ARABIA

Local name Al-'Arabiyah as-Sa'ūd iyah (Arabic)

Timezone GMT + 3

Area 2 331 000 km²/899 766 sq mi

Population total (1992e) 15 267 000

Status Kingdom

Capital Riyadh (Ar-Riyadh)

Language Arabic (official)

Ethnic groups Arab (90%), Afro-Asian (10%)

Religions Muslim (Sunni 85%, Shi'ite 15%), small Christian minority

Physical features Comprises four-fifths of the Arabian peninsula. Red Sea coastal plain bounded E by mountains; highlands in SW contain Jebel Abha, Saudi Arabia's highest peak, 3 133m/10 279 ft; Arabian peninsula slopes gently N and E towards oil-rich Al Hasa plain on the Arabian Gulf; interior comprises two extensive areas of sand desert, the An Nafud (N) and Rub' al-Khali (the Great Sandy Desert) (S); salt flats numerous in E lowlands. Large network of wadis drains NE. 95% of land is arid or semi-arid desert.

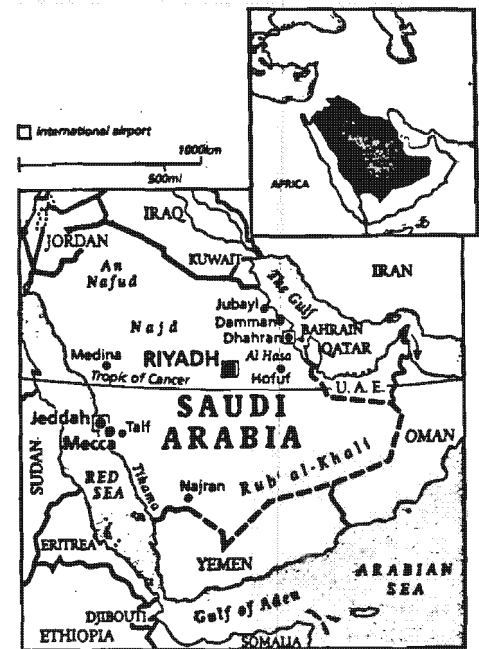
Climate Hot, dry climate; average temperatures 21°C (N), 26°C (S), rise to 50°C in the interior; night frosts common in N and highlands. Red Sea coast hot and humid; average annual temperatures 14°C (Jan), 33°C (Jul) in Riyadh; average annual rainfall 100 mm/4 in.

Currency 1 Saudi Arabian Riyal (SAR, SRIs) = 100 halalah

Economy Oil discovered in 1930s; now the world's leading oil exporter (reserves account for c.25% of world's known supply). Rapidly-developing construction industry. Large areas opened up for cultivation in 1980s; agriculture; wheat, dates, livestock. Pilgrimage trade.

GDP (1989) \$79 bn, per capita \$4 800

History Famed as the birthplace of Islam, a centre of pilgrimage to the holy cities of Mecca, Medina, and Jeddah.



Modern state founded by Ibn Saud who by 1932 united the four tribal provinces of Hejaz (NW), Asir (SW), Najd (C), and Al Hasa (E); governed as an absolute monarchy based on Islamic law and Arab Bedouin tradition. King (official title: Custodian of the Two Holy Mosques (Mecca and Medina)) is Head of State and Prime Minister, assisted by a Council of Ministers; there is no parliament. Royal decree, 1992, provided for the creation of a 60-member Consultative Council to be appointed every 4 years.

Head of State/Government (Monarch)

Family name: Al-Saud

1982- Fahd ibn Abdul Aziz

UNITED ARAB EMIRATES

Local name Ittihad al-Imarat al-'Arabiyah

Timezone GMT + 4

Area 83 600 km²/32 300 sq mi

Population total (1992e) 1 990 000

Status Federation of autonomous emirates

Date of independence 1971

Capital Abu Dhabi

Languages Arabic (official), English, Farsi, Urdu, and Hindi also spoken

Ethnic groups Emirian (19%), other Arab (23%), S Asian (50%)

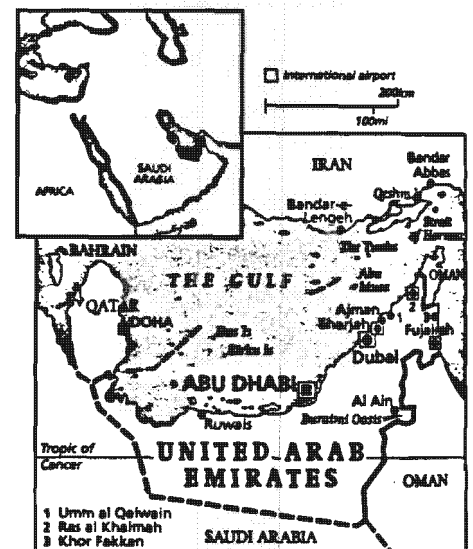
Religions Muslim (Sunni 80%, Shi'ite 16%), Christian (4%), small Hindu minority

Physical features Seven states in EC Arabian peninsula on S shore (Trucial Coast) of the Arabian Gulf. Al Fujairah has a coastline along the Gulf of Oman. Salt marshes predominate on coast. Barren desert and gravel plain inland. Hajar Mts in Al Fujairah rise to over 1 000 m/3 000 ft in E.

Climate Hot, dry desert climate, extreme summer temperatures exceeding 40°C and limited rainfall; frequent sandstorms. Average annual temperatures 23°C (Jan), 42°C (Jul) in Dubai; average annual rainfall 60 mm/2.4 in.

Currency 1 United Arab Emirates Dirham (DH) = 100 fils

Economy Based on oil and gas (main producers, Abu Dhabi, Dubai). Important commercial and trading centre. Saline water supplies have restricted agriculture to oases and irrigated valleys of Hajar Mts. Vegetables, fruits, dates, dairy farming. Tourism.



GDP (1989) \$27.3 bn, per capita \$12 100

History Originally peopled by sea-faring tribes, converted to Islam in 7th-c; Mecca conquered by powerful sheikhdom of Carmathians; upon its collapse piracy common, area known as the Pirate Coast. Portuguese explorers arrived in 16th-c; British East India Company arrived in 17th-c; British attacked the coastal ports, 1819-20 and exacted a pledge to renounce piracy in the General Treaty, 1820; became known as Trucial Coast

Case Management Record

Discussion Handout

DFARS Case 96-D329		Date March 24, 1997	
Title Restriction on MILCON Overseas A-E Contracts			
Priority 1	Submitted By (b)(6)	Origination Code L	
Case Manager (b)(6)		Case References	
FAR Cites		DFARS Cites 225.70, 236.6, 252.236	
Cognizant Committees Construction			
Coordination FC			
Recommendation Convert to final rule without change <i>Convert to final rule without change</i>			
<p>This case was opened on September 30, 1996, to implement Section 111 of the FY 97 Military Construction Appropriations Act (Pub. L. 104-196). Section 111 provides that no funds may be obligated for architect and engineer contracts estimated by the Government to exceed \$500,000 for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, unless such contracts are awarded to U.S. firms, or U.S. firms in joint venture with host nation firms.</p> <p>An interim rule was published for public comment (62 FR 2856), with comments due on or before March 18, 1997. No public comments were received.</p> <p>However, verbal inquiry was received as to the location of the "Arabian Gulf," and whether we meant the Persian Gulf or the Arabian Sea. Since the Gulf War, the Government now generally uses the term "Arabian Gulf" to identify the Gulf bordered by Saudi Arabia, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Iraq, and Iran (see attached).</p>			
<div style="border: 1px solid black; padding: 2px; display: inline-block;">MAR 26 1997</div>			

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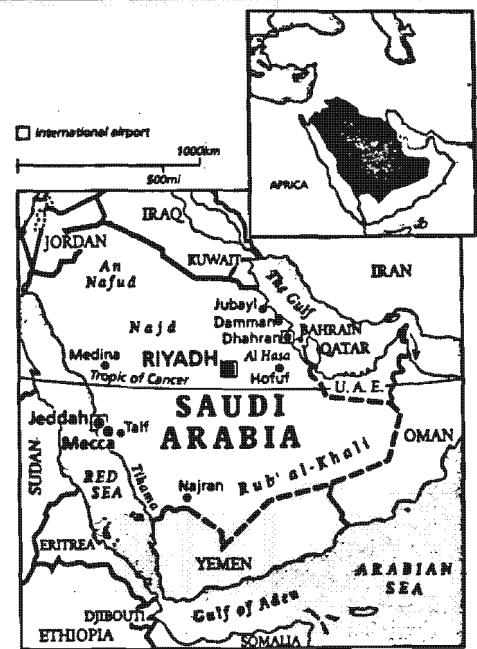
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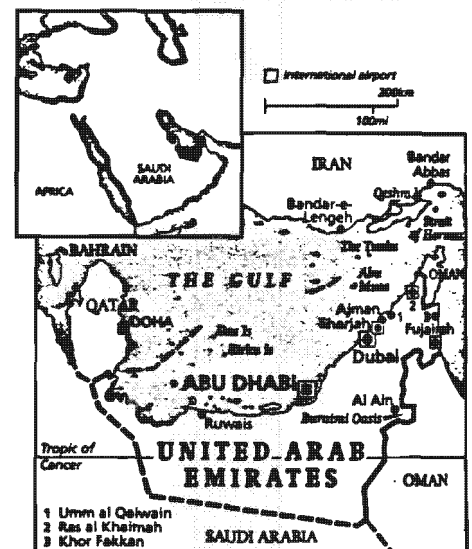
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Official Case Record

Date: October 30, 1996

DFARS Case: 96-D329

Case Title: Restriction on MILCON Overseas A-E Contracts

Origination:

L

Sponsor:

A

Committee:

Construction

Case Manager:

(b)(6)

FAR/DFARS: 228.70

DFARS Part 236.6, 252.236

Statute:

Section 111 of Pub. L. 104-196

Statutory Date:

Outside Interest (Circle): IG OFPP OMB DCAA GAO Industry Other _____

Coordination/Comments (Circle): DDP MPI CPA CPF DSPS FC GC Other AR _____

Action Scheduled Today:

Discuss committee/Case manager recommended revisions to the DFARS.
TAB B - Statute; TAB - FC memo; TAB D - Committee Report.

OSD Position:

Recommend agreement with draft interim/FAR rule at TAB A.

Discussions/Actions Taken:

CAM Update: Agree to interim rule, as edited

✓ whether or not Bill text necessary

DFARS Case 96-D329
Restriction on MILCON Overseas A-E Contracts

PART 225—FOREIGN ACQUISITION

* * * * *

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER
STATUTORY RESTRICTIONS ON FOREIGN PURCHASES[ACQUISITION]

225.7004 ~~Reserved.~~ *{Restriction on machine tools and powered and non-powered valves deleted by 96-D023}* [Restriction on overseas architect-engineer services.

For restriction on award to foreign firms of architect-engineer contracts to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf, see 236.602-70.]

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

* * * * *

SUBPART 236.6—ARCHITECT-ENGINEER SERVICES

* * * * *

236.602 Selection of firms for architect-engineer contracts.

* * * * *

236.602-70 Restriction on award of overseas A-E contracts to foreign firms.

[In accordance with Section 111 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction that are estimated to exceed \$500,000 and are to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf shall be awarded only to United States firms or to joint ventures of United States and host nation firms.]

* * * * *

236.609-70 ~~Option for supervision and inspection services~~ [Additional provisions and clauses].

(a)[(1)] Use the clause at 252.236-7009, Option for Supervision and Inspection Services, in solicitations and contracts for A-E services when—

(1)[i]) The contract will be fixed price; and

(2)[ii]) Supervision and inspection services by the A-E may be required during construction.

(b)[2]) Include the scope of such services in Appendix A of the contract.

appropriations

TAB A

[(b) Use the provision 252.236-70YY, Overseas Architect-Engineer Services - Restriction to United States Firms, in architect-engineer contracts that are estimated to exceed \$500,000 and are to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf.]

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

[252.236-70YY Overseas Architect-Engineer Services - Restriction to United States Firms.
As prescribed in 236. 609-70(b), use the following provision:

**OVERSEAS ARCHITECT-ENGINEER SERVICES - RESTRICTION TO
UNITED STATES FIRMS (DATE)**

(a) *Definition.*

“United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of two 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
- (iii) The firm employs United States citizens in key management positions.

(b) *Restriction.* Military construction appropriations acts restrict award of this contract to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of this offer, that it is a United States firm or a joint venture of United States firms and host nation firms.

(End of provision)]

①		
Date: October 30, 1996		DFARS Case: 96-D329
Case Title: Restriction on MILCON Overseas A-E Contracts		
Origination: L	Sponsor: A	Committee: Construction
Case Manager: (b)(6)	FAR/DFARS: 22.5.70 DFARS Part 236.6, 252.236	
Statute: Section 111 of Pub. L. 104-196		Statutory Date:
Outside Interest (Circle): IG OFPP OMB DCAA GAO Industry Other _____		
Coordination/Comments (Circle): DDP MPI CPA CPF DSPS <u>FC</u> GC Other AR _____		
Action Scheduled Today: Discuss committee/Case manager recommended revisions to the DFARS. TAB B - Statute; TAB - FC memo; TAB D - Committee Report.		
OSD Position: Recommend agreement with draft interim FAR rule at TAB A.		
Discussions/Actions Taken: C... C... C...		
CAM Update:		

Case Management Record

Discussion Handout

DFARS Case 96-D329		Date October 30, 1996
Title Restriction on MILCON Overseas A-E Contracts		
Priority 1	Submitted By (b)(6)	Originator Code L
Case Manager (b)(6)	Case References	
FAR Cites	DFARS Cites 225.70, 236.6, 252.236	
Cognizant Committees Construction		
Coordination FC		
Recommendation Discuss with case today.		
<p>This revised draft interim rule has been coordinated with the construction committee chair and FC.</p> <p>DFARS Case 96-D328 adds the definition of "United States firm" at 236.102, which applies also to this case.</p>		
OCT 30 1996		

**DFARS Case 96-D329
Restriction on MILCON Overseas A-E Contracts**

PART 225—FOREIGN ACQUISITION

* * * * *

SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES[ACQUISITION]

225.7004 ~~Reserved.~~ {Restriction on machine tools and powered and non-powered valves deleted by 96-D023} [Restriction on overseas architect-engineer services.

For restriction on award to foreign firms of architect-engineer contracts to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf, see 236.602-70.]

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

* * * * *

SUBPART 236.6—ARCHITECT-ENGINEER SERVICES

* * * * *

236.602 Selection of firms for architect-engineer contracts.

* * * * *

236.602-70 Restriction on award of overseas A-E contracts to foreign firms.

[In accordance with Section 111 of Public Law 104-32 and similar sections in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction that are estimated to exceed \$500,000 and are to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

* * * * *

236.609-70 ~~Option for supervision and inspection services~~[Additional provisions and clauses].

(a)[(1)] Use the clause at 252.236-7009, Option for Supervision and Inspection Services, in solicitations and contracts for A-E services when—

(4[i]) The contract will be fixed price; and

(2[ii]) Supervision and inspection services by the A-E may be required during construction.

(b)[2]) Include the scope of such services in Appendix A of the contract.

[(b) Use the provision 252.236-70YY, Overseas Architect-Engineer Services - Restriction to United States Firms, in architect-engineer contracts that are estimated to exceed \$500,000 and are to be performed in Japan, any NATO member country, or in countries bordering the Arabian Gulf.]

*** * * * ***

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

*** * * * ***

[252.236-70YY Overseas Architect-Engineer Services - Restriction to United States Firms. As prescribed in 236. 609-70(b), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES - RESTRICTION TO UNITED STATES FIRMS (DATE)

(a) *Definition.*

“United States firm,” as used in this provision, means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;**
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of two 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**
- (iii) The firm employs United States citizens in key management positions.**

(b) *Restriction.* Military construction appropriations acts restrict award of this contract to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of this offer, that it is a United States firm or a joint venture of United States firms and host nation firms.

(End of provision)]

Case Management Record

discussion

<i>Case:</i> 96-D329		<i>Date:</i> 22 Oct. 1996	
<i>Title:</i> Restriction on MILCON Overseas A-E Contracts			
<i>Priority:</i> 1	<i>Submitted By:</i> Army Policy		<i>Originator:</i>
<i>Case Manager:</i> AW		<i>Case References:</i>	
<i>FAR Cites:</i>		<i>DFARS Cites:</i>	
<i>Committees:</i> Construction, A-E and Bonds			
<i>Coordination:</i>			
<i>Recommendation:</i> Discuss: 1d80			

OCT 29 1996

October 21, 1996

CECC-C

MEMORANDUM FOR DIRECTOR, DAR COUNCIL

SUBJECT: DFARS Case 96-D329, Restriction on MILCON Overseas A-E Contracts

I. PROBLEM: The Military Construction Appropriations Act 1997 restricts certain overseas MILCON funded contracts for Architect-Engineer (A-E) services to United States firms or to joint ventures of United States and host nation firms.

II. RECOMMENDATION: Revise the DFARS as shown at Tab A.

III. DISCUSSION: Section 111 of the 1997 DoD Military Construction Appropriations Act provides that no funds appropriated under the Act may be obligated for A-E contracts estimated by the Government to exceed \$500,000 for projects in Japan, in any NATO member country or in countries bordering the Arabian Gulf, unless such contracts are awarded to United States firms or to joint ventures of United States and host nation firms.

IV. COLLATERALS:

Federal Register Notice: This rule would have a significant effect on competition beyond agency internal operating procedures. Public comments concerning this regulation should be invited through a Federal Register notice, in accordance with 41 U.S.C. 418b and FAR 1.301(b).

Regulatory Flexibility Act: A Regulatory Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601-611). This rule would not impose a new burden on any small businesses.

Paperwork Reduction Act: The provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) do not apply. This rule would not impose a new requirement on 10 or more offerors or contractors to submit, maintain, retain or disclose information.

V. COORDINATION: The Army, Navy, Air Force and DoD members concur in this report.

FOR THE CONSTRUCTION, A-E AND BONDS COMMITTEE:

Laura K. Meeker, Chair

Enclosures

[216.602-70 Additional selection restrictions.

The 1997 military construction appropriations act (Public Law 104-196, section 111) requires that contracts be awarded only to United States firms or to joint ventures of United States and host nation firms if the contract --

[(1) is funded by a military construction appropriations act;

[(2) Is for architect-engineer services (including study, planning and design)

[(3) Is estimated to exceed \$500,000; and

[(4) Will be performed in Japan, in any NATO member country, or in countries bordering the Arabian Gulf.

Tab A

Case Management Record

Discussion Handout

DFARS Case 96-D329	Date	September 30, 1996
Title Restriction on MILCON Overseas A-E Contracts		
Priority I	Submitted By (b)(6)	Originator Code L
Case Manager (b)(6)	Case References	
FAR Cites	DFARS Cites 236.6	
Cognizant Committees Construction/International Acquisition Committees		
Coordination		
Recommendation Task CON Cmte. RD: 10/23/96		
<p>This is a new DFARS case to implement Section 111 of the FY97 Military Construction Appropriations Act (Public Law 104-196). Section 111 provides that no funds may be obligated for architect and engineer contracts estimated by the Government to exceed \$500,000 for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.</p> <p>Section 111 was effective upon enactment (September 16, 1996).</p>		

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in Military Construction

Appropriations Acts shall be expended for payments under a cost-plus-a-fixed-fee contract for work, where cost estimates exceed \$25,000, to be performed within the United States, except Alaska, without the specific approval in writing of the Secretary of Defense setting forth the reasons therefor: [*Italic->*] Provided, [*<-Italic*] That the foregoing shall not apply in the case of contracts for environmental restoration at an installation that is being closed or realigned where payments are made from a Base Realignment and Closure Account.

SEC. 102. Funds appropriated to the Department of Defense for construction shall be available for hire of passenger motor vehicles.

SEC. 103. Funds appropriated to the Department of Defense for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

SEC. 104. None of the funds appropriated in this Act may be used to begin construction of new bases inside the continental United States for which specific appropriations have not been made.

SEC. 105. No part of the funds provided in Military Construction Appropriations Acts shall be used for purchase of land or land easements in excess of 100 per centum of the value as determined by the Army Corps of Engineers or the Naval Facilities Engineering Command, except (a) where there is a determination of value by a Federal court, or (b) purchases negotiated by the Attorney General or his designee, or (c) where the estimated value is less than \$25,000, or (d) as otherwise determined by the Secretary of Defense to be in the public interest.

SEC. 106. None of the funds appropriated in Military Construction Appropriations Acts shall be used to (1) acquire land, (2) provide for site preparation, or (3) install utilities for any family housing, except housing for which funds have been made available in annual Military Construction Appropriations Acts.

SEC. 107. None of the funds appropriated in Military Construction Appropriations Acts for minor construction may be used to transfer or relocate any activity from one base or installation to another, without prior notification to the Committees on Appropriations.

SEC. 108. No part of the funds appropriated in Military Construction Appropriations Acts may be used for the procurement of steel for any construction project or activity for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.

SEC. 109. None of the funds available to the Department of Defense for military construction or family housing during the current fiscal year may be used to pay real property taxes in any foreign nation.

SEC. 110. None of the funds appropriated in Military Construction Appropriations Acts may be used to initiate a new installation overseas without prior notification to the Committees on Appropriations.

SEC. 111. None of the funds appropriated in Military Construction Appropriations Acts may be obligated for architect and engineer contracts estimated by the Government to exceed \$500,000 for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Gulf, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.