

**Supporting Statement for Emergency Information Collection Request Approval:  
Guam Military Base Realignment Contractor Recruitment Standards**

**A. Justification**

This is a justification for the request by the U.S. Department of Labor (USDOL), Employment and Training Administration (ETA) for emergency approval to implement a new data collection necessitated by the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111–84, enacted October 28, 2009) . The NDAA requires an expanded effort to recruit U.S. and other eligible workers for employment on Guam military base realignment construction projects. This reporting structure features electronic posting of construction job opportunities on an Internet job banks site with national coverage, posting job opportunities on several state workforce agency job banks, and documentation of worker recruitment results reports that will be submitted to the Guam Department of Labor (GDOL). All data collection and reporting will be done by military base construction contractors, and the data and recruitment results in a report that will be submitted to the GDOL. These recruitment requirements will help fulfill the responsibilities assigned to the Secretary of Labor in the provisions of the NDAA of 2010 and will increase employment opportunities for U.S. construction workers. Finally, contractors will use the response to recruitment (job order) postings, in the event they are not successful in attracting sufficient numbers of U.S and other eligible workers, to justify the need for foreign workers under the H2B temporary non-agriculture foreign worker certification program

**Emergency Approval** The base construction projects have encountered several major delays, which have made it difficult to determine the start date for hiring. Long-standing concerns related to environmental impacts (sewage, water, and population), historic preservation, potential inundation of Guam emergency and non-emergency medical infrastructure and other facilities, the Japanese Tsunami, the national recession, and Federal budget constraints all contributed to significant delays and adjustment in the start dates for construction projects. However, recent reports from the GDOL and press releases from the Naval Facilities Engineering Command (NAVFAC) Pacific indicate that more than \$200 million has been awarded for various construction projects, making the need to hire workers imminent as projects move from the design to construction phase.

Most recently, early in August, 2012, NAVFAC Pacific awarded an \$89.7 million firm fixed-price contract to Hensel Phelps - Granite JV of Greeley, Colorado, for the first phase of utilities and site improvement (U&SI) work on Guam at Andersen Air Force Base in Yigo and Naval Base Guam at Apra Harbor. This contract is the first project funded by monies received from the Government of Japan as part of its direct cash contribution to the relocation of Marines from Okinawa, Japan to Guam. The contract includes site improvements, clearing, utilities, roadways and other improvements in support of building construction needed to support Marine Corps aviation and waterfront operations.

DOL believes the release of the final environmental impact study, the sign-off on program agreements regarding the historic preservation between the Department of Defense and the government of Guam, and the award of the contracts funded by Japan means that the military base build-up activity has intensified and the need to recruit and hire workers is imminent.

The Employment and Training Administration (ETA) Office of Workforce Investment is requesting emergency approval to implement a new data collection necessitated by the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84, enacted October 28, 2009). The NDAA requires an expanded effort to recruit U.S. and other eligible workers for employment on Guam military base realignment construction projects.

The NDAA section 2834 (a)(6)(A) and (C)(i), prohibits work performed by a person holding a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C.1101(a)(15)(H)(ii)(b)) unless there is a certification by the Governor of Guam, in consultation with the Secretary of Labor, that there are not sufficient United States workers who are available, willing, qualified, and available at the time of application for a visa and an admission to the United States and at the place where the persons holding the visas are to perform such skilled and unskilled labor. In addition, section (C)(ii) requires a certification by the Governor of Guam that the employment of such persons holding visas will not adversely affect the wages and working conditions of workers in Guam similarly employed.

**PRA Implications:** Initially DOL considered a non-substantive change request to OMB to align recruitment efforts with existing, and similar, requirements in the data collection encompassed in OMB Control Number 1205-0466, which omits data collection from Guam. NDAA's recruitment requirements are slightly more rigorous than those provided for in 1205-0466, in this respect: in addition to the state where the work will be performed, NDAA's Guam military base realignment U.S. worker recruitment effort requires contractors to advertise and solicit for construction workers within the continental United States as well as in Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico, in accordance with a recruitment plan approved by the Secretary of Labor.

Given the NDAA's unique concerns, OMB has approved the vehicle of an emergency submission for approval for a new data collection so that job order postings may occur. Approval for the submission will permit DOL to communicate the recruitment standards to the military base realignment contractors via a Federal Register Notice.

### **A.1 Reasons for Data Collection.**

NDAA pertains to the realignment of some military forces from Okinawa to Guam and prioritizes the hiring of U.S. workers for this project. Section 2834(a) of the NDAA amended Section 2824(c) of the Military Construction Authorization Act (Public Law

110-417, Division B) by adding a new subsection (6) which requires the USDOL to approve contractor recruitment plans as follows.

(D) SOLICITATION OF WORKERS.—In order to ensure compliance with subparagraph (A), as a condition of a contract covered by such subparagraph, the contractor shall be required to advertise and solicit for construction workers in the United States, including Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico, in accordance with a recruitment plan approved by the Secretary of Labor. The contractor shall submit a copy of the employment offer, including a description of wages and other terms and conditions of employment, to the Secretary of Labor at least 60 days before the start date of the workers under a contract. The contractor shall authorize the Secretary of Labor to post a notice of the employment offer on a website, with State, territorial and local job banks, with State and territorial workforce agencies, and with any other referral and recruitment sources the Secretary of Labor determines may be pertinent to the employment opportunity.

(E) RECRUITMENT PERIOD.—The Secretary of Labor shall ensure that a contractor's recruitment of construction workers complies with the recruitment plan required by subparagraph (D) for a period beginning 60 days before the start date of workers under a contract and continuing for the next 28 days. During the recruitment period, the contractor shall interview all qualified and available United States construction workers who have applied for the employment opportunity, and, at the close of the recruitment period, the contractor shall provide the Secretary of Labor with a recruitment report providing any reasons for which the contractor did not hire an applicant who is a qualified United States construction worker. Not later than 21 days before the start date of the workers under a contract, the Secretary of Labor shall certify to the Governor of Guam whether the contractor has satisfied the recruitment plan created under subparagraph (D).

USDOL Recruitment Plan Requirements: To fulfill the above provisions of the NDAA, Guam military base realignment contractors must take the actions described below to recruit U.S. construction workers, in addition to complying with other statutory and regulatory requirements governing the employment of their workers.

1. At least 60 days prior to the start date of workers under a base realignment contract, contractors shall:
  - a. Submit a job posting with GDOL at [http://dol.guam.gov/index.php?option=com\\_jobline&Itemid=0&task=add](http://dol.guam.gov/index.php?option=com_jobline&Itemid=0&task=add) or by submitting a completed Job Order (Form GES 514) in person at the Guam Employment Service office. The job posting must be posted on the GDOL Job Bank for at least 21 consecutive days;

- b. Post the job opportunity with the state workforce agency's (SWA) Internet job bank in American Samoa at [www.usworks.com/americansamoa/](http://www.usworks.com/americansamoa/) , 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](http://www.jobs.state.ak.us));
  - ii. California ([www.caljobs.ca.gov](http://www.caljobs.ca.gov));
  - iii. Hawaii ([www.hirenethawaii.com](http://www.hirenethawaii.com));
  - iv. Oregon([www.emp.state.or.us/jobs](http://www.emp.state.or.us/jobs)); and
  - v. Washington (<https://fortress.wa.gov/esd/worksource/Employment.aspx>).

The job listing must be posted for at least 21 consecutive days. If for any reason the Internet job bank in American Samoa is not available, the contractor must place an advertisement on two Sundays in a newspaper that is; 1) of general circulation in that state or territory, 2) has a reasonable distribution and is appropriate to the occupation, and 3) that workers likely to apply for construction jobs will have the opportunity to see the job listing.

- c. Post the job opportunity with an Internet-based job bank that is;
    - i. national in scope, including the entire United States, 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 is
    - iii. free of charge to job seekers and their intermediaries in 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. The job postings in (1)(a) through (c) must include, at a minimum:
- (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) If applicable, a statement that daily transportation to and from the worksite(s) will be provided by the employer;
  - (d) A description of the job opportunity with sufficient information to apprise U.S. workers of 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;
  - (e) If applicable, a statement that on-the-job training will be provided to the worker;
  - (f) If applicable, a statement that overtime will be available to the worker and the wage offer(s) for working any overtime hours;

- (g) The wage offer, or in the event that there are multiple wage offers, the range of applicable wage offers; and
- (h) A statement that the position is temporary and the total number of job openings the employer intends to fill.

The postings are separate and distinct requirements – i.e., a posting under Section 1(b) cannot be used to satisfy the posting requirement under Section 1(c).

3. During the minimum 28-day recruitment period, contractors shall interview all qualified and available Guam and U.S. construction workers who have applied for the employment opportunity.
4. At the close of the recruitment period (not fewer than 30 days before the start date of workers under a contract), for each job listing, the contractor shall provide a report including the following information via e-mail to GDOL at [ndaa.recruitment@dol.guam.gov](mailto:ndaa.recruitment@dol.guam.gov) documenting efforts to recruit U.S. workers from the United States and all U.S. territories, including:
  - a. A description of all the recruitment approaches used to recruit realignment workers. The description must include the Internet job bank where the posting occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the date of posting, and the job order or requisition number. If newspaper advertisements were used, the description must also include the dates that these ads appeared in the newspaper;
  - b. A copy of each job posting;
  - c. A detailed description of how each response to the job postings were handled including:
    - i. the number of job applications received,
    - ii. the name of the applicants,
    - 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 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.

#### **A.2 Users, Purposes, and Consequences of Failure to Collect the Information.**

Failure to collect the requested data would result in U.S. construction industry workers losing much needed job opportunities in an industry that has not yet recovered from the Great recession. As noted above, ETA is requesting emergency approval for this new data collection because the provisions of the NDAA will not allow Guam military base construction contractors to hire workers until the Secretary of Labor develops and implements an expanded U.S. worker recruitment plan that depends on collecting the information described above. Construction contractors will be unable to fill their workforce needs, project delays will occur, and the cost of the projects would raise making private sector construction contractors less profitable. Finally, delays could

affect the Navy, Marine, and Air Force deployment of thousands of military personnel, and their families.

### **A.3 Technology and Obstacles Affecting Reporting Burden.**

There are no technological barriers or obstacles. The data collection and reporting requirements can be fulfilled via the Internet and through the electronic transmission of data and information.

### **A.4 Efforts to Identify Duplication.**

ETA staff researched the job posting requirements of the USDOL Office of Federal Contractor Compliance Programs, and the Office of Foreign Labor Certification's H2B program to assure that no duplication of effort would be necessary for the Guam military base realignment construction contractors. In fact, the Secretary of Labor's enhanced U.S. worker recruitment plan will fulfill both the pre-application recruitment requirement of the GDOL Alien Labor Processing and Certification program and the Department of Homeland Security's foreign labor certification program's domestic worker recruitment requirements.

### **A.5 Methods to Minimize Burden on Small Business.**

This collection does not create any unusual burden small businesses. The data collection and reporting requirements can be fulfilled via the Internet and through the electronic transmission of data and information.

### **A.6 Consequences of Less Frequent Data Collection.**

The worker recruitment and recruitment result report is required once per job listing and is not a recurring requirement.

### **A.7 Special Circumstances Involved in Collection of Data.**

This data collection effort does not involve any special circumstances.

### **A.8 Preclearance Notices and Responses.**

An emergency review notice has been published in the Federal Register to allow the public to comment on this submission. In addition, the public will have an opportunity to comment again when this information request is resubmitted under regular procedures.

### **A.9 Payments to Respondents.**

There are no payments to respondents.

### **A.10 Confidentiality**

There is no assurance of confidentiality.

#### **A.11 Questions of A Sensitive Nature.**

The data collection does not involve collecting information of a sensitive nature.

#### **A.12 Estimates of the Burden of Data Collection**

The expanded recruitment plan and burden estimate for this data collection used the burden estimates for OMB control number 1205-0466 as a starting point. Annually approximately 12,000 non-agricultural temporary foreign labor employment certification requests are submitted by businesses to the USDOL H2B program. For each of the requests, the business interested in securing foreign labor certifications is required to post a job order with the employment service delivery system within the state and provide a report on the results of the U.S. worker recruitment.

Department of Defense reports indicate that over the course of the multi-year Guam military base realignment of service members and their families, up to 20,000 workers may be needed for construction and related employment. The February 1, 2011, report from the Interagency Coordination Group of Inspector Generals for Guam Realignment indicates that the completion of the base realignment may be delayed until 2017.

To determine the hour burden associated with the NDAA Guam Base Realignment domestic workforce recruitment effort, ETA estimates that twenty thousand (20,000) workers would be needed over six years (2011 to 2017), or 3,333 workers per year. Job order postings are expected for multiple job openings that would range from 20 to 50 workers per job order. Using an estimate of 30 positions per job order, contractors would need to post approximately 111 job orders per year.

Recruitment activities described above, including advertising for U.S. workers and/or posting job orders, are a usual and customary activity for employers/contractors. Therefore, under OMB regulations at 5 CFR 1320.3(b)(2) and (3), the resources expended by employers for recruitment activities are excluded in compiling the public burden estimate. The Guam base realignment-related job order posting, and the recruitment results reporting requirement, on the other hand, are beyond the usual and customary level of activity and will increase the contractor's burden as follows:

After a job order is developed and posted on the Guam job bank site, contractors may need 15 minutes to post the same job order on an additional job bank. For the base realignment recruitment, jobs will need to be posted on seven additional workforce agency job banks (CNMI, American Samoa, HI, AK, CA, WA, and OR), as well as on an Internet job bank site with a national scope. The burden is estimated to be two hours per job order or 222 added annual burden hours (8 job banks x 15 minutes estimated for each job bank posting, x 111 postings annually).

The NDAA Guam base realignment recruitment standard requires contractors to develop and provide a report on the results of the domestic worker recruitment efforts. The U.S. Department of Labor estimated that the time needed to prepare recruitment reports for the Foreign Labor Certification program is an additional hour per job order. Thus, the burden required by the NDAA for recruitment reports is estimated at 111 hours, for a total of 333 hours (222 hours for posting 111 job orders at 8 job banks each plus 111 additional hours for preparing and submitting recruitment reports).

#### **A.13 Estimated Cost to Respondents**

**(1) Start-up/capital costs:** There are no start-up costs, or special data systems involved with this data collection. As noted above, recruitment activities, including advertising for U.S. workers and/or posting job orders, are a usual and customary activity for employers/contractors.

**(2) Annual costs:** There are no annual or recurring costs

#### **A.14 Estimates of Annualized Costs to Federal Government**

The cost of implementing this data collection system will be borne by military base realignment contractors as a normal cost of doing business. GDOL will use a portion of their Federal allotment under Wagner–Peyster Act employment services delivery system funding as needed.

#### **A.15 Changes in Burden**

This is a new data collection.

#### **A.16 Tabulation of Publication Plans and Time Schedules for the Project**

Guam military base realignment will proceed over a period beginning in 2011 and is not expected to be completed before 2017. Contractors will conduct the NDAA required enhanced U.S. worker recruitments and will submit recruitment result reports to the GDOL.

Each year, ETA will monitor GDOL’s operation as normal part of the Wagner Peyster Act grant monitoring conducted by ETA’s San Francisco Regional Office. Reports of findings and/or corrective action plans will be developed as necessary.

#### **A.17 Display of OMB Expiration Date.**

The Expiration Date will be displayed.

#### **A.18 Exceptions to the Certification Statement**

There are no exceptions to the NDAA expanded U.S. worker recruitment requirements.



**B. Collection of Information Employing Statistical Methods**

No statistical methods are employed.