

**Supporting Statement: OMB Control No. 1205-0484, Guam Military Base
Realignment Contractor Recruitment Standards**

A. Justification

This is a justification for the Employment and Training Administration's (ETA's) request for a three year extension of OMB's approval for Guam Military Base Realignment Contractor Recruitment Standards, OMB 1205-0484, 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 is done by military base construction contractors, and the data and recruitment results will be submitted to the GDOL. These recruitment requirements help fulfill the responsibilities assigned to the Secretary of Labor in the provisions of the NDAA of 2010 by increasing 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.

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.

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

- v. Washington (<https://fortress.wa.gov/esd/worksource/Employment.aspx>).

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

The job listing must be posted for at least 21 consecutive days.

- 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
 - iii. is free of charge for job seekers and their intermediaries in American Job Center (formerly called One-Stop Career Centers) and the U.S. employment service delivery system nationwide.
- d. Where the occupation or industry is customarily unionized, contact the local union in Guam in writing to seek U.S. workers who are qualified and who will be available for the job opportunity.

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

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

lodging, a statement disclosing the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided.

3. During the minimum 28-day recruitment period, which begins on the earliest date of posting, contractors must 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, and no later than 30 days before the start date of workers under a contract, the contractor must provide a report including the following information via e-mail to GDOL at ndaa.recruitment@dol.guam.gov, documenting its efforts to recruit U.S. workers from the United States and all U.S. territories.
 - a. A description of all the recruitment approaches used to recruit realignment workers. The description must include the Internet job bank where the postings occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the date of each posting, and the job order or requisition number;
 - b. A copy of each job posting;
 - c. A detailed description of how each response to the job postings was handled, including:
 - i. the number of job applications received;
 - ii. the name of each applicant;
 - iii. the position applied for;
 - iv. the final employment determination for each applicant or job candidate; and
 - v. for each U.S. job applicant not hired, a description of the specific lawful, job-related reason for rejecting the applicant for employment, which includes a comparison of the job applicant's skills and experience against the terms listed in the original job posting.

The one-hour estimate includes the time necessary to produce the report. DOL has required that the reason be provided, and has not stipulated that a narrative style is necessary. Employers may set up a table or a spreadsheet which necessitates only checking a box to indicate whether an individual reported for an interview or not, or lacked specific qualifications. Such a management information system is a routine part of employer hiring, and required to comply with equal employment opportunity laws.

To ensure that the Workforce Investment System nationwide are aware of and prepared to participate in identifying and referring construction work job seekers to the employment opportunities that will be available as a result of the base realignment and build-up on Guam, ETA will develop a Training and Employment Notice (TEN) for broad distribution to the leadership and staff of the Workforce Investment System. Once published and disseminated to the system the TEN will be mounted on the DOL ETA Advisory Web page at <http://wdr.doleta.gov/directives/>.

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

All federal construction contractors and subcontractors seeking to hire workers under the National Defense Authorization Act's provisions pertaining to the Guam Base Realignment and Build-up projects constitute the universe of respondents. DOL and the government of Guam will use this information to ensure compliance with that statute. 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. 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. As noted above in item A.1 a above contractors must submit a job posting via a completed Job Order (Form GES 514) in person at the Guam Employment Service office, which is open Monday to Friday (except holidays) from 8 a.m. to 5 p.m. at 414 W. Soledad Avenue, Suite 400, Hagatna (for assistance call 671-475-7000). GDOL requires this of all businesses who request approval for temporary labor visas. Guam DOL staff will take the contractors' information and complete the data collection. Since the contractors all operate on-site on a small island, DOL believes that there is no difference in the burden between electronic and in-person submissions. The Guam agency staff indicate that this would typically include travel to the Guam Job Center that would only five (5) minutes or so and completing the GES 514 or providing the information to a Job Center staff member orally. DOL believes the Guam activities in this regard impose no burden on the territory, since the Guam requirement would exist regardless of the DOL information collection.

A.4 Efforts to Identify Duplication.

ETA staff researched the job posting requirements of the USDOL Office of Federal Contractor Compliance Programs (OFCCP), and the Office of Foreign Labor Certification's (OFLC) H2B program and determined there is no duplication of effort or additional burden associated with posting contractor job listings on the Guam Job bank, because such outreach is already required. OFCCP enforces the equal employment opportunity requirements applicable to Federal government contractors. OFCCP's rules require qualifying employers to immediately list job openings with the appropriate local office of the state employment service, although this requirement may be satisfied by listing the openings with the state workforce agency's (SWA) job bank. OFCCP regulations implementing Executive Order 11246 require qualifying construction

contractors to provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available. See OMB CONTROL NUMBER: 1250-0001 and the equal opportunity clause of the OFCCP regulations at §60-1.4 (a)(3). The written notification could be in the form of an e-mail.

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. To ensure that small businesses are able to learn about the Guam Military Base Build-up contractor, ETA will publish a Federal Register Notice and develop and post a notice on the DOL ETA Business Web page at <http://www.doleta.gov/business/>. The posting will include a hyperlink to the Federal Register notice that covers the contractor recruitment standard.

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.

A Notice was published in the Federal Register on January 18, 2012 (vol. 77, p. 2569 et seq) to allow the public sixty days to comment on this submission. No comments were received.

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).

The one-hour estimate includes the time necessary for contractors to produce the recruitment results reports. DOL merely requires that the reason be provided, and has not stipulated that a narrative style is necessary. Employers may set up a table or a spreadsheet which necessitates only inserting a phrase or checking a box to indicate whether an individual reported for an interview or not, or lacked specific qualifications. Such a management information system is a routine part of employer hiring, and required to comply with equal employment opportunity laws. Since the reporting requirements necessitate minimal extra work, the one-hour estimate is sufficient to account for any additional burden. The DOL Office of Foreign Labor Certification's current OMB data collection approval estimates that up to 8,717 job orders annually will be posted by businesses nationwide, and estimates one hour per job order for reports similar to those required for the Guam realignment.

DOL has eliminated the requirement that postings under section 1 above be separate and distinct. DOL estimates that an in-person job listing with Guam DOL would take 15 minutes to assure that contractors are bonafide and operating on Guam, the same as posting on the Internet since Guam staff will do the data entry using the Form GES 514 and that would meet the national site Internet posting as well. The Guam agency staff indicates that this would typically include travel to the Guam Job Center of approximately five (5) minutes, in order to complete the GES 514 or provide the information orally to a Job Center staff member.

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. There is no cost for posting on the publicly funded labor exchange job banks operated by the states and territories, or for an employer posting on the national labor exchange (www.US.Jobs) the one that Guam will use when the business is working with a state workforce agency. In addition, the American Samoa internet job bank is operational, so newspaper advertising is no longer necessary, eliminating that cost.

(2) Annual costs:

For contractors, in DOL's required report to Congress (which is posted on the OMB site in its entirety), DOL outlined the routine burden for activities similar to this project. The relevant passages are below.

Rules for Federal contractors. DOL's Office of Federal Contract Compliance Programs (OFCCP) enforces the equal employment opportunity requirements

applicable to Federal government contractors. The rules enforced by OFCCP apply to Federal contractors in the United States, including those in Guam. Among other things, OFCCP's rules require qualifying employers to immediately list job openings with the appropriate local office of the state employment service, although this requirement may be satisfied by listing the openings with the state workforce agency's (SWA) job bank. Furthermore, OFCCP regulations implementing Executive Order 11246 require qualifying construction contractors to provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available.

Rules for H-2B non-agricultural workers. Unlike the rest of the United States, the Governor of Guam rather than DOL is responsible for the determination of temporary labor certifications for H-2B temporary or seasonal nonimmigrant workers in Guam. The H-2B nonimmigrant visa category is the category normally used under U.S. immigration law to seek to import foreign construction workers temporarily to fill positions which themselves are temporary in nature. Under Guam's temporary labor certification regulations and guidelines, in order to obtain an H-2B non-agricultural worker certification in Guam, an employer must 1) advertise job openings for at least three consecutive days in Guam's largest daily newspaper; 2) place a job offer with the appropriate Guam job referral service at least 30 days prior to the commencement of employment; 3) conduct appropriate recruitment in other areas of the United States if sufficient U.S. construction workers are not available on Guam (the Governor may require the job order to be placed more than 30 days in advance); 4) report to the appropriate agency the names of all U.S. workers who applied for the position, indicating those hired and the job-related reasons for not hiring; and 5) offer all special considerations, such as housing and transportation expenses, to all U.S. workers who applied for the position, indicating those hired and the job-related reasons for not hiring. Although the Governor of Guam has the authority to issue temporary labor certifications for H-2B workers on Guam, the U.S. Department of Homeland Security (DHS) is responsible for determining the adequacy of the U.S. labor market test. Specifically, DHS is required to determine whether or not U.S. workers are available and whether or not the alien worker's employment will adversely affect the wages and working conditions of similarly employed U.S. workers.

As for the burden on the government of Guam, collecting and processing job orders is a routine task funded under the Wagner-Peyser Act. In addition, the Guam Alien Labor Processing and Certification Division also receives Federal funds to process business requests for temporary non-agricultural workers under the H-2B program and U.S. Citizenship and Immigration Services authority and follows the approach described in this data collection and Guam Administrative rules.

ETA provides Guam with approximately four million dollars per year in formula allocations for the Workforce Investment Act adult, youth, and dislocated worker

employment and training programs, and Wagner-Peyser Act funding for the employment service delivery program that supports a centrally located, comprehensive American Job Center. The GDOL will utilize portions of its annual Wagner-Peyser Act grant funding for the Guam military base realignment construction worker recruitment effort.

To assist realignment contractors to recruit U.S. workers, DOL estimates that over the course of the multi-year buildup between two and four additional full-time equivalent employees will be needed to support Guam DOL and the Governor of Guam. Using the latest BLS Occupational Employment Statistics estimate for employment, recruitment, and placement specialists in Guam, the mean hourly rate was \$20.03 in 2010, equivalent to a mean annual wage of \$41,662.¹ Because benefit costs for state and local government workers are 34.4 percent of total employer costs, the total employment cost is an estimated \$63,500 per full-time equivalent (FTE) employee.² For the base realignment, Guam may need from two to four additional FTE's, costing between \$127,000 and \$254,000. To this amount should be added the cost to Guam for the NASWA annual membership of \$22,000 per year, and thus the total cost should not exceed approximately \$275,000 annually.

The Department of Defense was notified of these costs and encouraged to consider providing a grant of \$146,000 to \$275,000 per year to the Guam DOL to meet anticipated costs. The Naval Facilities Engineering Command, Joint Guam Program Office, and/or the DoD Office of Economic Adjustment were identified as the appropriate authorities to identify the appropriate funding level and source to meet the workforce needs for the DoD military base realignment projects on Guam.

A.14 Estimates of Annualized Costs to Federal Government

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

Each year, ETA will monitor GDOL's operation as normal part of the Wagner Peyser Act grant monitoring conducted by ETA's San Francisco Regional Office (ETA Region 6). Reports of findings and/or corrective action plans will be developed as necessary and no additional cost to the Federal government is expected in this regard. ETA estimates that a Regional Office staff member will spend one hour per week or 52 hours per year to guide and monitor the Guam agency's handling of the contractor recruitment of U.S. workers. ETA estimates the cost to the government is therefore \$3,276 per year, since a Regional Office staff member at grade 13 step 5 commands an hourly wage of \$63, which includes benefits at 30% of salary rate.

A.15 Changes in Burden

¹ http://www.bls.gov/oes/current/oes_gu.htm#00-0000

² BLS, "Employer Costs for Employee Compensation — December 2010," March 9, 2011, USDL 11-0304, Table 4, p. 9

There is no change in the burden approved in the previous Emergency Paperwork Reductions Act data collection approval in OMB Control Number 1205-0484.

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.

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 utilized.