



NOV 28 2011

MEMORANDUM OF UNDERSTANDING
U.S. WORKER RECRUITMENT FOR THE GUAM MILITARY BASE
REALIGNMENT AND BUILD-UP

1. PARTIES AND PURPOSE

This memorandum of understanding (MOU) is between the U.S. Department of Labor (DOL) Employment and Training Administration (ETA) and the Guam Department of Labor (GDOL). The purpose of this MOU is to assign to GDOL DOL's duty, as set forth in the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84), to oversee the recruitment of U.S. construction workers supporting the U.S. military realignment in Guam in connection with an employer's application for an H-2B labor certification.

2. BACKGROUND

NDAA prioritizes the hiring of U.S. workers for the multi-year Guam military base realignment 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 DOL to approve contractor recruitment plans in the following areas:

SOLICITATION OF WORKERS.—In order to ensure compliance as a condition of a contract, 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; and

RECRUITMENT PERIOD.—The Secretary of Labor shall ensure that a contractor's recruitment of construction workers complies with the recruitment plan. 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. 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.

The Department of Labor fosters and promotes the welfare of job seekers, wage earners, and retirees of the U.S. by improving their working conditions, advancing their opportunities for profitable employment, protecting their retirement and health care benefits, helping employers find workers, strengthening collective bargaining, and tracking changes in employment, prices and other national economic measures.

The mission of the Guam Department of Labor is to foster, promote, and develop the welfare of the wage earners of Guam, to improve their working and living conditions, and to advance their opportunities for occupational training and profitable employment.

3. AUTHORITY

The authority for this agreement is set forth in Sections 3 and 7 of the Wagner-Peyser Act of 1933, as amended by the Workforce Investment Act of 1998 (29 U.S.C. § 49 *et seq.*)

4. TERMS AND CONDITIONS

GDOL's duties include, but are not limited to, the following:

- A. On behalf of the Secretary of Labor and in support of the base realignment contractor's efforts to recruitment a domestic workforce, GDOL agrees to act as DOL's agent to oversee the implementation and compliance with the Contractor Recruitment Plan which is attached and hereby incorporated into this MOU by:
 - 1. Receiving base realignment job listings from contractors;
 - 2. Entering contractor jobs into the Guam DOL job bank and the National Labor Exchange (NLX) job bank at www.JOBcentral.com;
 - 3. Tracking job seeker self referrals, resumes, and Web-based views and visits to contractor job listing via the GDOL referral data and the NLX job bank analytics;
 - 4. Accepting resumes and job applications, and transmitting these to the contractors for consideration;
 - 5. Responding to job seeker and contractor questions;
 - 6. Monitoring contractor hiring patterns;
 - 7. Receiving contractor recruitment result reports;
 - 8. Evaluating and validating contractor recruitment results by comparing them against the Guam DOL job seeker referrals and the views and visits data collected by the www.JOBcentral.com Web site;
 - 9. Certifying to the Governor of Guam whether the contractor has satisfied the domestic worker recruitment standard requirements plan and attesting that there are not sufficient United States workers who are able, willing, qualified, and available and that the employment of persons with H-2B guest worker visas will not adversely affect the wages and working conditions of workers in Guam similarly employed. Pub. L. 111-84, §2834(a)(6)(C)(i) and (ii); and
 - 10. Transmitting contractor recruitment information to Guam DOL's Alien Labor Processing Certification Division for H2B program consideration.
- B. Additional duties to be performed by GDOL must be agreed to by USDOL and GDOL before GDOL will be required to perform those additional duties. Such agreement shall be in writing and signed by both parties.

- C. DOL and GDOL agree to incorporate any appropriate changes in procedures necessitated by changes to Federal law or by rule or regulation changes promulgated by the U.S. Department of Labor's Office of Federal Contract Compliance, the Office of Foreign Labor Certification, and the Department of Homeland Security's Citizenship and Immigration Services.
- D. GDOL shall include in its Wagner-Peyser Act grant quarterly progress reports to the DOL ETA San Francisco Regional Office detailed information on the military base realignment activity, specific data on contractor recruitment activities, including the results of domestic recruitment, the impact analysis and the recommendations made to the Governor of Guam.
- E. At the discretion of the Assistant Secretary for the Employment and Training Administration and/or the San Francisco Regional Office Administrator, ETA will conduct program audits and report validation reviews. These will be scheduled in advance and will likely coincide with Regional Office staff onsite grant reviews.
- F. To ensure compliance with the NDAA, GDOL will provide the information specified below to DOL on a semi-annual basis, by the dates to be specified by DOL.
 - 1. GDOL will provide DOL with a list of all GDOL staff working on this project, with contact information. DOL reserves the right to contact these staff at anytime.
 - 2. GDOL will provide DOL with copies of its plans, policies, and procedures relevant to the implementation of the MOU, NDAA recruitment plan and recruitment standards.
 - 3. GDOL will provide DOL with the NDAA employer recruitment results reports and the corresponding GDOL recommendations to the Governor of Guam.
 - 4. DOL will draw from this dataset a random sample for review. DOL may request additional documentation from GDOL as part of its review.
 - 5. DOL will provide to Guam its findings and conclusions based upon this review, including recommendations for corrective action if necessary.
 - 6. GDOL will provide a written response to DOL's report, which will include the corrective actions it has taken or will take.

5. TRANSFER OF FUNDS

The GDOL shall utilize portions of its annual Wagner-Peyser Act grant funding for the Guam military base realignment construction worker recruitment effort. DOL will consider requests from GDOL for additional funding beyond GDOL's annual Wagner-Peyser Act grant funding, but approval of GDOL's request is contingent on the availability of additional funds.

6. POINTS OF CONTACT

The points of contact of each party to this agreement are:

For the US Department of Labor, Employment and Training Administration:

Jane Oates, Assistant Secretary
Employment and Training Administration
Washington, D.C. 20210

Or

Richard Trigg, Regional Administrator
U.S. Department of Labor
San Francisco, California

For the Guam Department of Labor:

Leah Beth Naholowaa, Director
Guam Department of Labor
Hagatna, Guam 96910

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

7. DURATION AND TERMINATION OF THIS MOU

This MOU will become effective when it is signed by all parties, and will remain effective indefinitely thereafter. DOL may unilaterally terminate this MOU upon thirty days written notice to GDOL. GDOL may terminate this MOU with 90 days prior written notification to DOL.

This agreement is an internal Government agreement between the parties, and is not intended to confer any right upon any private person or third party.

Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict DOL ETA or the GDOL from participating in similar activities or arrangements with other entities.

8. RESOLUTION OF DISAGREEMENTS

In the event of any disagreement arising under this MOU, the parties shall attempt to resolve the disagreement through negotiations in good faith. Where Treasury Financial Manual, Volume I, Bulletin No. 2007-03, Attachment 1 does not apply, the parties will negotiate a resolution with assistance from OMB.

9. PRIVACY

Any confidential or personal data or information collected by GDOL pursuant to the performance of its duties under this MOU shall be subject to the laws and regulations of the Territory of Guam governing the storage, use, and dissemination of such information. Any confidential or personal data or information submitted to DOL by GDOL pursuant to this MOU is subject to the Privacy Act of 1974.

10. SIGNATURES



[Employment and Training Administration]

SEP 26 2011

[Date]



[Guam Department of Labor]

11/22/11

[Date]

John Otto

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