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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203 and 252

[Docket DARS-2016-0016]

RIN 0750-AI94

Defense Federal Acquisition Regulation Supplement: Display of Hotline Posters (DFARS Case 2016-D018)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to consolidate the multiple hotline posters into one poster that delineates multiple reportable offenses.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 81 FR 28816 on May 10, 2016, to revise DFARS clause 252.203-7004, Display of Hotline Posters, to reduce the number of fraud,

waste, and abuse hotline posters required to be displayed and to remove the United States only restriction for use of the poster. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of the comment is provided, as follows:

A. Summary of Significant Changes from the Proposed Rule

The following two changes from the proposed rule are based on internal Government comments:

- At DFARS 203.1003, paragraph (c) is added to permit alternative means of notifying contractor personnel of the DoD Hotline program in lieu of displaying the posters, when performance is outside the United States and security concerns can be appropriately demonstrated to the contracting officer. In the DFARS 252.203-7004 clause, a similar statement is also added at paragraph (b)(1)(ii).

- The final rule also removes from the DFARS 252.203-7004 clause the statement regarding assistance with translation. The contractor bears the individual and financial responsibility for translation and accuracy of translated hotline posters.

B. Analysis of Public Comment

Comment: The respondent supports the proposed rule to display a consolidated poster, and recommends the DoD Office of the Inspector General consider publishing several poster variations that combine these three initiatives and that any one of these posters may be displayed at the option of the contractor. This will permit contractors to periodically rotate posters in order to refresh interest and attention by contractor employees, and also permit contractors to select posters that more closely match their respective corporate culture. In addition, the respondent recommended that at least some posters emphasize the benefits of a culture that does not tolerate fraud or human trafficking and encourages reporting, rather than just the negative, punitive aspects of compliance failure.

Response: This comment is outside the scope of this rule and no change is made to the rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

The Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.203-7004, Display of Hotline Posters, required three separate hotline posters which have now been combined into one poster. The objective of the rule is to reduce the number of fraud, waste, and abuse hotline posters required to be displayed and to remove the United States only restriction for use of the poster.

There were no public comments in response to the initial regulatory flexibility analysis.

DFARS clause 252.203-7004 is required for use in contracts with an estimated value greater than \$5.5 million, except contracts awarded using Federal Acquisition Regulations part 12 commercial item procedures for the acquisition of commercial item. According to data available in the Federal Procurement Data System, in fiscal year (FY) 2015, DoD awarded 4,180

contracts meeting this criteria to 2,656 unique vendors, of which 1,598 (approximately 60% percent) were small businesses. DoD estimates the total number of small businesses affected by this rule to be approximately 1,920 small businesses (the total for FY 2015 plus 20 percent to accommodate subcontractor applicability).

There are no reporting or recordkeeping burdens associated with this rule.

The rule has no significant economic impact on small entities. DoD did not identify any significant alternatives that would reduce the impact on small entities and still meet the objectives of the statute.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203 and 252 are amended as follows:

1. The authority citation for parts 203 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Amend section 203.1003 by adding paragraph (c) to read as follows:

203.1003 Requirements.

* * * * *

(c) Fraud hotline poster. For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster required by 203.1004(b)(2)(ii), such as private employee written instructions and briefings.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.203-7004 by—

- a. Removing the clause date "(OCT 2015)" and adding "(OCT 2016)" in its place;
- b. Revising paragraph (b);
- c. Removing paragraph (c);
- d. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively;

e. In newly redesignated paragraph (c)(1), removing "These DoD hotline posters" and adding "The DoD hotline poster" in its place and removing "or are also" and adding "or is also" in its place;

f. In newly redesignated paragraph (c)(2), removing "posters are" and adding "poster is" in its place and removing the last sentence;

g. In the newly redesignated paragraph (c)(3), removing "these required posters" and adding "the required poster" in its place; and

h. In newly designated paragraph (d), removing the phrase "the substance of" and removing "paragraph (e)" and adding "paragraph (d)" in its place.

The revision reads as follows:

252.203-7004 Display of Hotline Posters.

* * * * *

(b) Display of hotline poster(s). (1)(i) The Contractor shall display prominently the DoD fraud, waste, and abuse hotline poster prepared by the DoD Office of the Inspector General, in effect at time of contract award, in common work areas within business segments performing work under Department of Defense (DoD) contracts.

(ii) For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the

contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster, such as private employee written instructions and briefings.

(2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds and the work is to be performed in the United States, the DHS fraud hotline poster shall be displayed in addition to the DoD hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from-

(i) DHS Office of Inspector General/MAIL STOP 0305, Attn: Office of Investigations - Hotline, 245 Murray Lane SW, Washington, DC 20528-0305; or

(ii) Via the internet at https://www.oig.dhs.gov/assets/Hotline/DHS_OIG_Hotline-optimized.jpg.

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