List of Subjects in 48 CFR Part 245

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 245 is amended as follows:

PART 245—GOVERNMENT PROPERTY

■ 1. The authority citation for 48 CFR part 245 continues to read as follows:

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

■ 2. Add section 245.104 to read as follows:

245.104 Responsibility and liability for Government property.

In addition to the contract types listed at FAR 45.104, contractors are not held liable for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data.

■ 3. Amend section 245.107 by redesignating paragraphs (a) through (e) as paragraphs (1) through (5) and adding paragraph (6) to read as follows:

245.107 Contract clauses.

* * * * *

(6) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, use the clause at FAR 52.245–1, Government Property, without its Alternate I.

[FR Doc. 2011–29416 Filed 11–17–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203 and 252

RIN 0750–AG99

Defense Federal Acquisition Regulation Supplement: Representation Relating to Compensation of Former DoD Officials (DFARS Case 2010–D020)

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

ACTION: Final rule.

SUMMARY: DoD is amending the DFARS to require offerors to represent whether former DoD officials who are employees of the offeror are in compliance with post-employment restrictions.

DATES: *Effective Date:* November 18, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 76 FR 32846 on June 6, 2011, that proposed adding a requirement for offerors submitting proposals to DoD to represent whether former DoD officials employed by the offeror are in compliance with post-employment restrictions. Four respondents submitted public comments on the proposed rule.

A. Post-Employment Statutory Restrictions and Regulatory Implementation

The principal statutory restrictions concerning post-Government employment for DoD officials after leaving Government employment are at 18 U.S.C. 207 and 41 U.S.C. 2104 (formerly 41 U.S.C. 423) and 5 CFR parts 2637 and 2641.

1. FAR 3.104 implements 41 U.S.C 2104 and 18 U.S.C. 207.

2. DFARS 203.104 implements the Procurement Integrity Act for DoD.

3. DFARS 203.171–3 implements section 847 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008.

B. General Accountability Office (GAO) Study GAO–08–485

The Congress included a provision in the NDAA for FY 2007 (section 851 of Pub. L. 109–364) requiring the GAO to report on recent employment of former DoD officials by major defense contractors. In May 2008, the GAO issued its report, entitled ''Defense Contracting: Post-Government Employment of Former DoD Officials Needs Greater Transparency'' (GAO–08–485). The GAO found that contractors significantly under-reported the employment of former DoD officials and concluded that defense contractors may employ a substantial number of former DoD officials on assignments related to their former positions. GAO further concluded that greater transparency is needed by DoD with respect to former senior and acquisition executives to ensure compliance with applicable post-employment restrictions. The GAO recommended that DoD ask potential offerors to certify that the former DoD officials employed by the offeror are in compliance with post-employment restrictions when contracts are being awarded and that contracting officers consider continuing certifications throughout the performance of the contract.

C. DFARS Rule

This DFARS rule implements the recommendation of the GAO by adding a new representation for offerors to complete and provide as part of each proposal, including proposals for commercial items. DoD elected to employ a representation rather than a certification and have the representation submitted by offerors as part of the proposal process. The representation will be required only one time rather than continuously throughout contract performance. The provision will not be included in the annual representations and certifications.

The solicitation provision at DFARS 252.203–7005, entitled ''Representation Relating to Compensation of Former DoD Officials,'' is a representation that all of the offeror's employees who are former DoD officials are in compliance with the post-employment restrictions at 18 U.S.C. 207, 41 U.S.C. 2101–2107, and 5 CFR parts 2637 and 2641, as well as FAR 3.104–2.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments received in response to the proposed rule in the formation of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments follows.

A. Contractor Compliance Responsibility

Comment: Two respondents noted that compliance with ethics rules is the responsibility of the covered officials, not the contractor employing them. According to the respondents, although contractors instruct and train employees to observe all post-government employment restrictions, contractors have no official compliance responsibility regarding employees' post-government employment restrictions.

Response: FAR subpart 3.10, entitled ''Contractor Code of Business Ethics and Conduct,'' requires, among other things, that contractors exercise due diligence to prevent and detect criminal conduct and otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. Contractors must also timely disclose to the Government any credible evidence of a violation of criminal law, which would include, for example, a violation of 18 U.S.C. 207 (post-Government employment restrictions). Accordingly, contractors, as employers of covered officials, have an affirmative compliance responsibility regarding employees'

post-Government employment restrictions. Contractors must ensure their employees avoid engaging in criminal conduct while carrying out duties on the contractor's behalf. Stated individuals' resumes generally do not include every particular matter on which they worked. Hiring contractors have a duty to interview their new hires who formerly worked for DoD and screen their work experiences for relevant particular matters.

Comment: Two respondents asserted that implementation of the proposed rule would require contractors to establish compliance systems to identify, track, educate, and require periodic certifications from employees and consultants across their businesses (rather than those specific to a contract) to identify former DoD covered officials. According to the respondents, such systems would require additional compliance mechanisms and personnel to design, implement, execute, test, and evaluate, thereby raising overhead costs for contractors, which could ultimately increase costs to the Government.

Response: Contractors should know on what particular matters covered officials worked and already ensure employees are not assigned to work on those matters because there are current requirements to maintain and track this information. FAR subpart 3.10 requires contractors to be aware of employees who are covered officials and any existing prohibitions and requirements relating to their employment. In addition, when contractors hire covered DoD officials, DFARS 252.203–7000(b) requires them to determine whether the covered officials sought and received advice regarding post-employment restrictions on behalf of the contractor. This rule does not require the creation of new compliance systems, and additional costs should not be incurred.

Comment: Two respondents asserted that the proposed rule would require contractors to certify compliance involving matters unrelated and unknown to the offeror, because the proposed regulation provides no limitation related to the contractors' business and the covered officials' other activities or employment. Respondents suggested limiting the proposed representation to ''work related to this offer'' or ''activities that the official is expected to undertake on behalf of the contractor.''

Response: DFARS 252.203–7000(b) provides ''(t)he Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.'' It would be reasonable to include a similar limitation in the representation, e.g., ''that all covered DoD officials employed by, or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with—* * *.'' Appropriate revision has been made in the final rule to the DFARS provision at 252.203–7005(b).

B. Contractor Identification of ''Covered Officials'' and ''Particular Matters''

Comment: One respondent stated that ''identifying which job applicants are 'covered officials' is not trivial.'' This respondent explained that ''resumes are often tailored to the job being sought: Certain items are highlighted, others omitted entirely. Consequently, while it is usually simple to tell if a potential candidate was a 'senior official,' it is often difficult to identify if he or she was an 'acquisition executive'.''

Response: The term ''covered DoD official'' is defined in DFARS 252.203–7000(a) as an individual who ''left DoD service on or after January 28, 2008,'' and either ''participated personally and substantially in an acquisition as defined in 41 U.S.C. 131 with a value in excess of $10 million'' and who served in specifically highlighted positions or served within DoD as ''program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of $10 million.'' Contractors need to seek clarification with job applicants and employees as to whether the applicant meets the DFARS definition in order to ensure employees are in compliance with DoD post-employment restrictions.

Comment: A respondent highlighted potential difficulties in identifying ''particular matters'' on which the job applicant worked. The respondent stated that ethics opinions rarely identify the ''particular matters'' upon which the former DoD official worked and to which post-employment restrictions apply. The respondent concluded that failure to identify ''particular matters'' is ''a significant problem for individuals (and their employers) whose government portfolio was substantially broader'' than simply working on one program during their Government career.

Response: It is not feasible or practicable to expect that a Government ethics official list all ''particular matters'' for a Government employee. The most likely, and probably only, source for this type of information is the Government official requesting the post-employment restrictions opinion from the ethics official. Failure of the Government employee to provide a comprehensive list would inappropriately limit the scope of the ethics opinion to those items listed. The former Government official is in the best position to (1) recall the particular matters that he or she worked during his or her Government tenure and (2) advise future employers of his or her involvement in ''particular matters'' when the employer provides work assignments. The Code of Federal Regulations contains a definition of ''particular matter,'' as well as examples of what a ''particular matter'' is. The examples provide guidance for the types of situations and circumstances covered by the term. It is unrealistic to expect a finite set of examples listed in the regulations to cover all possible circumstances and situations that could arise regarding what constitutes a ''particular matter''.

C. Contractor Certification ''to the Best of Its Knowledge and Belief''

Comment: A respondent stated that there is no generally accepted definition of ''to the best of its knowledge or belief.'' This respondent explained that ''(s)ometimes it means simply that the person making the representation has no information to the contrary and is not willfully refusing to see a problem. At other times, it has been held to imply a duty to investigate before making the representation.''

Response: The standard, ''to the best of its knowledge and belief,'' is a recognized legal term of art, and one that has been used in numerous statutes over decades, e.g., The Truth in Negotiations Act has been in effect since 1963. (''A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) * * * shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.'' (10 U.S.C. 2306a, paragraph (a)(2)).

D. Consequences of the Rule

Comment: Two respondents suggested that the rule may have several adverse effects, including deterring: (1) Small companies from competing for

Government contracts; (2) contractors from hiring ''covered DoD officials;'' and (3) Federal employees who would be subject to the rule from seeking employment with DoD.

Response: This rule requires offerors to verify compliance with existing laws and regulations and, therefore, is unlikely to have the suggested deterrent effects unless the business was not otherwise ensuring compliance and/or did not intend to comply in the future. In that event, deterring non-compliance is consistent with the purposes underlying the rule. Further, to the extent one of the respondents was suggesting that small business concerns be exempted from the rule, such an exemption would substantially undermine its purpose of improving compliance, as available data indicates that small business concerns are likely to hire a large majority of ''covered DoD officials'' (see Regulatory Flexibility Act section).

E. Relationship to Existing Statutes and Regulations, Including the Clinger/Cohen Act Ban on New Certifications That Are Not Required by Law

Comment: Two respondents concluded that there was no need for this rule because (1) the Congress already addressed the concerns underlying the GAO report by enacting section 847 of the NDAA for FY 2009 (Pub. L. 110–417, enacted October 14, 2008); (2) FAR subpart 3.10, Contractor Code of Business Ethics and Conduct, already requires contractors to monitor post-employment compliance with 18 U.S.C. 207; and (3) the responsibility for post-employment compliance should rest primarily with former DoD employees. One of these respondents stated that the representation violates the Clinger/Cohen Act ban on new contractor certifications that are not required by law.

Response: (1) Section 847 of the NDAA for FY 2008 is entitled ''Requirements for Senior Department of Defense Officials Seeking Employment with Defense Contractors.'' The provision applies to defense contractors by prohibiting such contractors from knowingly providing compensation to a former DoD official ''within two years after such former official leaves (DoD), without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.'' While there is some relationship to section 847, the representation in the rule addresses the broader arena of post-employment restrictions (see paragraph A in the Background section of this notice for the listing). Further, the prohibition against providing compensation (section 847) was implemented by adding the clause at DFARS 252.203–7000, Requirements Relating to Compensation of Former DoD Officials (see the interim rule at 74 FR 2408, dated January 15, 2009, and the final rule at 74 FR 59913, dated November 19, 2009; DFARS Case 2008–D007).

(2) There is some relationship to FAR subpart 3.10. However, the FAR policy (FAR 3.1002(b)) states that contractors ''should have a written code of business ethics and conduct'' and ''should have an internal control system.'' (A contractor is not required to have an internal control system unless the procurement is over $5 million and it is not a small business concern (see FAR 3.1004(a) and 52.203–13(c)(2)). Further, the proposed rule is applicable exclusively to DoD procurements, and it is narrower than FAR subpart 3.10, in that it is concerned exclusively with post-employment restrictions for former DoD officials.

(3) The former DoD employee should be primarily responsible for his or her compliance with post-employment restrictions. However, businesses should support the highest ethical standards (see FAR 3.1002(a)) and should not hire former DoD officials who have not complied with the law or assign them to work on projects that are barred to them by the nature of their DoD assignments. The representation at DFARS 252.203–7005 in the final rule is intended to ensure that DoD does business with companies that are committed to the highest ethical standards.

(4) The Clinger/Cohen Act prohibited the creation of contractor certifications that are not required by law. The FAR and DFARS regularly employ the distinction between a representation and a certification, and representations have regularly been deemed not subject to the Clinger/Cohen Act ban.

F. Strengthen the Rule by Adding Five Requirements

Comment: One respondent expressed support for the proposed rule, but suggested that it be strengthened by adding the following five requirements for—

(1) The offeror to expressly state, when true, that it is compensating former DoD employees who have not received a written ethics opinion within the 30-day timeframe;

(2) The DoD IG to audit annually a stratified random sample of contracts and the contractor's list of former employees to determine whether contractors are in full compliance with post-employment restrictions asserted, whether former Government employees are in full compliance with post-employment restrictions, and whether DoD ethics officers have issued said written opinions within 30 days of being sought;

(3) DoD to sanction contractors and former DoD employees identified by the DoD IG as having violated the requirements;

(4) DoD to take appropriate action to ensure ethics opinions are issued within the 30-day timeframe; and

(5) DoD to make public the following information: (a) The database of ethics opinions required pursuant to section 847(b)(1); (b) the names of contractors and former DoD officials identified by the DoD IG as not being in compliance with the requirements of the proposed rule; (c) the actions taken by DoD to seek sanctions for each non-compliant contractor and former DoD official; and (d) what, if any, sanctions were actually imposed on the identified contractors and former DoD officials.

Response: All of the above recommendations are outside the scope of the GAO study and this rule.

G. Scope

Comment: A respondent stated that ''due to its broad scope'', implementation of substantial compliance programs is required.

Response: Contractors should already have programs in place that comply with standards of conduct and ethics program requirements as described in FAR 3.10 and more specifically, in DFARS clause 252.203–7000, included in all DoD solicitations and contracts. All companies, whether large or small, should have knowledge of the former defense employees that are proposed to work on specific solicitations.

H. Application to New Task or Delivery Orders

Comment: One respondent stated that the proposed rule does not specify whether contracts would need to include the post-employment representation in task and delivery orders and proposed the rule ''be amended to clarify that such representation would only be required at the time the umbrella indefinite-delivery, indefinite-quantity contract is awarded, and not for each task or delivery order.''

Response: The final rule clarifies the requirement. The prescription, at

DFARS 203.171–4, requires the provision at DFARS 252.203–7005, Representation Relating to Compensation of Former DoD Officials, ''in all solicitations, including solicitations for task and delivery orders.''

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:

This rule is being issued in response to a study by the General Accountability Office (GAO), entitled ''Defense Contracting: Post-Government Employment of Former DoD Officials Needs Greater Transparency'' (GAO–08–485), issued in May 2008. The GAO found that contractors under-reported the employment of former DoD officials to the extent that the contractors employed almost twice as many former DoD officials as had been reported. The GAO report showed that major defense contractors are not currently ensuring that former DoD senior officials and acquisition executives working on contracts are complying with post-employment restrictions.

The final rule requires offerors to submit, as part of the proposal, a representation that all former DoD officials who will be working on any resultant contract are in compliance with post-employment restrictions at 18 U.S.C. 207, 41 U.S.C. 2101–2107, and 5 CFR parts 2637 and 2641, as well as FAR 3.104–2.

The rule requires a representation from all offerors responding to a DoD solicitation, including commercial item acquisitions. A ''covered DoD official'' is already defined in the clause at DFARS 252.203–7000, Requirements Relating to Compensation of Former DoD Employees. That same clause also implements section 847 of the National Defense Authorization Act for Fiscal Year 2008 by prohibiting any DoD contractor from knowingly providing compensation to a covered DoD official within two years after the official leaves DoD service. There is no impact on an offeror from this new representation unless the contractor has not been monitoring its employees who are former covered DoD officials to ensure compliance with DFARS 252.203–7000.

No comments from small entities were received in response to the **Federal Register** Notice of the proposed rule, published June 6, 2011, at 76 FR 32846. However, a ''think tank'' requested the ''addition of language making it clear that the offeror has no duty to establish systems and procedures to police and define compliance * * *'' No language has been added in response to this request. Companies are prohibited, pursuant to subsection 3 of DFARS 203.171, entitled ''Senior DoD officials seeking employment with defense contractors,'' from ''knowingly provid(ing) compensation to a covered DoD official within two years after the official leaves DoD service unless the contractor first determines that the official has received * * * the post-employment ethics opinion'' pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

In the period of 2001–2006, 1.85 million former military and civilian personnel left DoD service. A ''covered DoD official'' is defined to include former DoD officials who held certain positions and who left DoD within the past two years (see DFARS 203.171–3(a) and 252.203–7000). The GAO found that the 1.85 million personnel who had left DoD service over a six-year period included only 35,192 who had served in the type of senior or acquisition official positions that made them subject to post-Government employment restrictions, if they were subsequently hired by defense contractors. Dividing 35,192 by three (to reduce the six-year period to a two-year period), we estimate that 11,730 of those officials would have left within the last two years. We estimate that 7,635 of these former officials may accept employment with a defense contractor (about 65 percent). The GAO study found that 2,435 of these covered officials were employed by 52 major defense contractors. Of the remaining 5,200 former officials covered by the Procurement Integrity Act, we estimate that 3,900 (75 percent) of them may work for small business concerns.

There were no comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule.

There is no reporting, recordkeeping, or other compliance requirement associated with this rule. Offerors make the representation by submission of an offer. By the terms of the representation, an offeror is prohibited from submitting an offer if it cannot make the representation. In order to submit an offer, small entities that hire a former DoD official covered by the Procurement Integrity Act will have to check the compliance of such employees with various applicable post-employment restrictions. DFARS clause 252.203–7000, Requirements Relating to Compensation of Former DoD Officials, already requires contractors to determine that a covered DoD official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor, regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the contractor. This representation of compliance does not impose an additional burden on the offeror.

There were no known significant alternatives identified that would achieve the objectives of the rule.

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.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

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

■ 1. The authority citation for 48 CFR 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. Revise section 203.171–4 to read as follows:

203.171–4 Solicitation provision and contract clause.

(a) Use the clause at 252.203–7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts.

(b) Use the provision at 252.203–7005, Representation Relating to Compensation of Former DoD Officials, in all solicitations, including solicitations for task and delivery orders.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 252.203–7005 to read as follows:

252.203–7005 Representation Relating to Compensation of Former DoD Officials.

As prescribed in 203.171–4(b), insert the following provision:

REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (NOV 2011)

(a) *Definition. Covered DoD official* is defined in the clause at 252.203–7000, Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101–2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104–2.

(End of provision)

[FR Doc. 2011–29421 Filed 11–17–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

RIN 0750–AH41

Defense Federal Acquisition Regulation Supplement: Administering Trafficking in Persons Regulations (DFARS Case 2011–D051)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add to the list of contract administration functions a requirement to maintain surveillance over contractor compliance with duties and responsibilities pertaining to trafficking in persons when they are incorporated in contracts.

DATES: *Effective Date:* November 18, 2011.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone (703) 602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

The current FAR, at section 22.1705, entitled ''Contract clause,'' prescribes use of the clause at FAR 52.222–50, Combating Trafficking in Persons, in all solicitations and contracts. When the contract will be performed outside the United States, the clause must be used with its Alternate I, as prescribed in FAR 22.1705(b). The clause requires contractors to inform employees of the Government's zero-tolerance policy and the actions that will be taken against them for violations of the policy. In addition, contractors are required to notify the contracting officer immediately of any information received about an employee's conduct that violates this policy and also of actions taken against an employee as a result of the violation.

While the clause at FAR 52.222–50, Combating Trafficking in Persons, has been in effect since February 2009, the listing of Government contract administration functions was not modified at that time to add surveillance of a contractor's compliance with the clause requirements. Because the addition of this contract administration function is internal to DoD and will not impact current contract requirements or contract clauses, this is not a significant revision as defined at FAR 1.501–1. Therefore, under the authority at FAR 1.501–3(a), this rule can be published as a final rule without first obtaining public comment.

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 a significant regulatory action and, therefore, was 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

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501–1 because this rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

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 Part 242

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 242 continues to read as follows:

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

■ 2. Amend section 242.302 by adding paragraph (a)(S–73) to read as follows:

242.302 Contract administration functions.

(a) * * *

(S–73) Maintain surveillance over contractor compliance with trafficking in persons requirements for all DoD contracts for services incorporating the clause at FAR 52.222–50, Combating Trafficking in Persons, and, when necessary, its Alternate I, as identified