

■ g. In newly redesignated paragraph (g)(1) introductory text, removing “(h)(3)” and adding “(g)(3)” in its place; and

■ h. In newly redesignated paragraph (g)(3), removing “(h)(1)” and adding “(g)(1)” in its place.

■ 5. Amend section 252.227–7037 by—

■ a. Removing the clause date “(JUN 2013)” and adding “(DATE)” in its place; and

■ b. Revising paragraphs (b)(1) and (2).
The revision reads as follows:

252.227–7037 Validation of restrictive markings on technical data.

(b) * * *

(1) *Commercial items.* (i) Except as provided in paragraph (b)(2) of this clause, the Contracting Officer will presume that the Contractor’s or a subcontractor’s asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense.

(ii) The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

(2) *Major weapon systems.* In the case of a challenge to a use or release restriction that is asserted with respect to data of the Contractor or a subcontractor for a major weapon system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense—

(i) The presumption in paragraph (b)(1) of this clause applies to—

(A) A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(a));

(B) A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(b)); and

(C) Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

(ii) In all other cases, the challenge to the use or release restriction will be sustained unless information provided by the Contractor or a subcontractor demonstrates that the item or process

was developed exclusively at private expense.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 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: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to consolidate the multiple hotline posters into one poster that delineates multiple reportable offenses.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 11, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016–D018, using any of the following methods:
○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2016–D018” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2016–D018.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2016–D018” on your attached document.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2016–D018 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Christopher Stiller, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov,

approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stiller, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise the DFARS to update DFARS clause 252.203–7004, Display of Hotline Posters. This clause currently requires the display of a DoD fraud hotline poster, a separate combating trafficking in persons poster, and a whistleblower protection poster. DoD has consolidated the posters into one poster to reduce the number of posters required to be displayed and proposes updating the clause accordingly. This rule also removes the United States-only restriction for use of the DoD poster, because the human trafficking poster requires display outside the United States, even though the fraud hotline poster did not. Additionally, if the contract is funded, in whole or in part, by the Department of Homeland Security (DHS) disaster relief funds and the work is to be performed in the United States, the DHS fraud hotline poster must also be displayed. The clause also is amended to provide contact information for obtaining the DHS poster.

II. 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.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.203–7004, Display of Hotline Posters, currently requires, in certain circumstance, the display of a DoD fraud hotline poster, a DoD Combatting Trafficking in Persons hotline poster, and a Department of Homeland Security (DHS) fraud hotline poster. The DoD Inspector General has consolidated the DoD hotline posters; therefore, only a one DoD poster is required.

DoD is proposing to amend the clause to clarify that only one DoD poster is required and to remove the United States-only applicability for the DoD fraud hotline poster. The rule also proposes to add contact information for obtaining the DHS hotline poster.

The clause 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).

This proposed rule does not add any new reporting, recordkeeping, or compliance requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to accomplish the objectives of the

proposed rule. The impact of this rule on small business is expected to be insignificant.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2016–D018), in correspondence.

IV. 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 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is proposed to be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

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

■ 2. Amend section 252.203–7004 by—

- a. Removing the clause date “(OCT 2015)” and adding “(DATE)” 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;

■ f. In newly redesignated paragraph (c)(2), removing “posters are” and adding “poster is” in its place and removing “(d)(1)” and adding “(c)(1)” in its place; and

■ g. In newly designated paragraph (d), removing “(e)” and adding “(d)” in its place.

The revision reads as follows:

252.203–7004 Display of Hotline Posters.

* * * * *

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

(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: DHS Office of Inspector General/MAIL STOP 0305, Attn: Office of Investigations—Hotline, 245 Murray Lane SW., Washington, DC 20528–0305, or also available via the internet at https://www.oig.dhs.gov/assets/Hotline/DHS_OIG_Hotline-optimized.jpg.

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