



28 April 2011

Ms. Clare Zebrowski
Defense Acquisition Regulations System
OUSD (AT&L) DPAP/DARS
Room 3B855
3060 Defense Pentagon
Washington, DC 20301-3060

Email: dfars@osd.mil

Subject: Defense Federal Acquisition Regulation Supplement; "Display of DoD Inspector General Fraud Hotline Posters" (DFARS Case 2010-D026)

Dear Ms. Zebrowski:

The Aerospace Industries Association (AIA) appreciates the opportunity to comment on the proposed rule, DFARS Case 2010-D026, "Display of DoD Inspector General Fraud Hotline Posters." We offer the following thoughts for your consideration:

In the September 2009 GAO Report, "Defense Contracting Integrity" (GAO-09-591), GAO analysts surveying 57 of the largest U.S. defense firms (those receiving more than \$500 million in FY 2006 DoD contract awards) found that each of the firms had stringent ethics programs in place, the majority of which were established years in advance of the December 2007 and December 2008 FAR requirements. GAO recommended that the DoD Inspector General (IG) make a determination of whether there was a compelling need to rescind the long-standing exemption allowing defense contractors to display their company hotline poster in their facility in lieu of the DoD IG's fraud hotline poster.

As a result of the GAO recommendation, the DoD IG issued a finding that the exemption **"has the potential** to make the DoD hotline program less effective" and **"may not be as effective** [all emphasis added) as the DoD poster in advertising the hotline number." As a result, DoD has proposed a contract clause that would mandate that defense contractors display DoD fraud hotline posters in common work areas within business segments performing work under the contract and at contractor work sites. The proposed rule would reverse the current exemption for DoD contractors who have a business ethics and conduct awareness program that includes a reporting mechanism (such as a hotline poster) from the requirement to

display DoD fraud hotline posters.¹ For the following reasons, we believe this recommendation is ill advised.

This proposed change would seriously undermine the role company hotline posters have in internal contractor compliance and ethics programs and which have a proven track record of inhibiting improper and/or illegal behavior. In fact, the GAO report found that the majority of contractors had “mechanisms in place for employees to anonymously or confidentially report suspected and contract-related violations.”

From a purely practical perspective, we believe that removing the exemption and requiring the use of the DoD Hotline posters will usurp the company’s position as the first line of defense against waste and fraud and, instead, place the DoD/IG in that role. As a result, the DoD/IG will become involved in matters of an urgent nature, as well as a significant number of day-to-day issues of no particular interest or relevance to DoD. For example, many matters reported to company hotlines are Human Resource-related issues that have little or nothing to do with the direct performance and final deliverables under U.S. Government funded contracts and subcontracts but still require timely and effective resolution in order for the contractor to fulfill its obligation to its employees and maintain an effective compliance and ethics program. If the contractor is not made immediately aware of these issues and is left to learn about them from the DoD/IG, they will be hampered in their ability to respond quickly, which ultimately will have a negative impact on employee morale. Placement of the DoD/IG Hotline posters in the workplace will most assuredly result in the DoD/IG being quickly drawn into a myriad of personnel and related issues, thus bogging down this system. We do not believe that would be in the best interests of either DoD or its contractors.

Similarly, if employees choose to contact the DoD/IG Hotline regarding more serious potential workplace safety or product quality matters, the contractor may not learn about these matters in a timely manner thereby increasing the possibility of injury or product escapes that could have been prevented. Directly inserting the DoD/IG into these matters will prolong the process by slowing the contractor’s response time and could potentially result in the DoD/IG taking on some measure of responsibility for failing to respond in a timely manner.

Contractors already have existing contractual and regulatory duties to notify the Government of certain significant events that occur in connection with contract performance. The defense industry takes most seriously its responsibility to self-report or voluntarily disclose violations to the Government. Contractors also take very seriously the need to have open and accessible reporting mechanisms and their responsibility to respond expeditiously and thoroughly to matters raised through those reporting mechanisms. Creating an alternate reporting mechanism without the same level of accountability as the contractor’s in-house or external reporting mechanism adds no value to the process and undermines existing systems, processes, and programs already in place.

¹FAR 52.203-14(c) states that “If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters, other than any required DHS posters.”

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In order to prevent the DoD IG from wasting precious resources sorting through and tracking contractor personnel and other matters in which it very likely will have little interest and to permit contractors' business ethics and conduct awareness programs, which have a proven track record of effectively addressing fraud, waste, and abuse in a timely manner, we respectfully request that the proposed rule be withdrawn and that FAR 42.304-14(c) remain unchanged. If you have any questions or need additional information, please do not hesitate to contact me. I may be reached by phone at 703-358-1087 or by e-mail at susan.tonner@aia-aerospace.org.

Sincerely,

A handwritten signature in cursive script that reads "Susan K. Tonner".

Susan K. Tonner
Assistant Vice President, Acquisition Policy