

DENTONS



Legislative and Regulatory Updates

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Agenda

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 - Whistleblower Protections
 - Federal Supply Chain Security Act
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- DFARS Updates
 - Section 808 of FY23 NDAA
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 - Federal Contractor Backpay During Government Shutdowns

FAR Updates

FAR Proposed Rule for Representation of Size and Socioeconomic Status

Proposed Rule

- DoD, GSA, and NASA published a proposed rule to amend the FAR to implement regulatory changes made by the SBA to require small business concerns to re-represent their size and/or socioeconomic status for orders placed under multiple-award contracts
- This rule also proposes to require that a contractor that represented itself as a small business concern at the multiple-award contract level to re-represent its size and socioeconomic status upon
 - Submitting an offer for small business set asides issued under an unrestricted multiple-award contract; and
 - Submitting an offer for orders issued under a set aside multiple-award contract that are further set aside for a specific socioeconomic category different from the underlying multiple-award contract (HUBZone and women-owned small business concerns)
- Comments will close for this proposed rule on Nov. 28, 2023

FAR Final Rule Providing Whistleblower Protection for Contractor Employees

Final Rule

- DoD, GSA, and NASA published a final rule to amend the FAR to enhance whistleblower protection for federal contractors and grantee employees
- The final rule also makes permanent a pilot program for enhancement of contractor protection from reprisal for sharing certain information
- Additionally, the final rule clarifies that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to both subcontractors and contractors
- The final rule went into effect on Nov. 6, 2023

FAR Interim Rule on Implementation of Federal Supply Chain Security Act

Interim Rule

- DoD published an interim rule amending the FAR to implement supply chain risk information sharing and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018
- The interim rule requires contracting officers, within six months of the effective date of the interim rule, to modify existing indefinite delivery contracts to include the FAR 52.204-30, Federal Acquisition Supply Chain Security Act Orders-Prohibitions
- Contracting officers also are required to include FAR 52.204-30 if exercising an option or modifying an existing contract or task or delivery order
- The interim rule will go into effect on Dec. 4, 2023

FAR Proposed Rule for Cyber Threat and Incident Reporting and Information Sharing

Proposed Rule

- DoD, GSA, and NASA published a proposed rule to amend the FAR to implement EO14028 on cyber threats, incident reporting, and information sharing related to cybersecurity policies
- The proposed rule requires timely reporting of cybersecurity incidents and additional actions to support incident response
- Further, contractors will need to develop and maintain a software bill of materials for any software used in performance of the contract
- The comment period for this proposed rule will close on Dec. 4, 2023

FAR Proposed Rule for Protests of Orders Set Aside for Small Business

Proposed Rule

- DoD, GSA, and NASA published a proposed rule to amend the FAR to implement regulatory changes made by the Small Business Administration to update and clarify requirements associated with size and/or socioeconomic status protests in connection with multiple-award contract set-asides, reserves, and orders placed under multiple-award contracts
- The proposed rule specifies when size protests must be submitted for the set aside or reserve of a multiple-award IDIQ contract and for orders that are set-aside for small business under an unrestricted multiple-award IDIQ contract
- The comment period for this proposed rule will close on Dec. 4, 2023

DFARS Updates

DFARS Interim Rule on Limitation on Certain Institutes of Higher Education

Interim Rule

- DoD published an interim rule amending the DFARS to implement section 1062 of the NDAA for FY 21; amendment prohibits DoD from providing funds to any institution of higher education that hosts a Confucious Institute
- The rule also adds new definitions at DFARS 209.170-1: defining Confucius Institute as “a cultural institute directly or indirectly funded by the government of the People’s Republic of China” and institution of higher education as the meaning given at 20 U.S.C. § 1002
- The interim rule went into effect on Oct. 1, 2023

DFARS Proposed Rule for Use of Fixed-Price Contracts for Certain Major Defense Acquisition Programs

Proposed Rule

- DoD published a proposed rule to amend the DFARS to implement section 808 of the NDAA for FY 23
- This amendment would add new guidance to contracting officers at DFARS 234.004, prohibiting them from procuring more than one low-rate initial production lot associated with a major defense acquisition program under certain circumstances
- Comments will close on Nov. 28, 2023

DFARS Interim Rule on Replacement of Fluorinated Aqueous Film Forming Foam

Interim Rule

- DoD published an interim rule amending the DFARS to implement section 322(b)–(d) of the NDAA for FY 2020
- This amendment prohibits DoD from procuring fluorinated aqueous film forming foam (AFFF) containing in excess of one part per billion of perfluoroalkyl and polyfluoroalkyl substances (PFAS) after Oct. 1, 2023, unless an exception applies
- The interim rule adds a new subpart and a new clause, which will flow down the requirements to subcontracts for fire-fighting on military installations
- The interim rule went into effect on Oct. 1, 2023

DFARS Final Rule Prohibiting Certain Procurements from the Xinjiang Uyghur Autonomous Region

Final Rule

- DoD published a final rule amending the DFARS to implement section 855 of the NDAA for FY 23
- The amendment prohibits DoD from using funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China
- Offerors represent that they made a good faith effort to determine that forced labor from the region will not be used in the performance of the contract resulting from the solicitation
- The final rule went into effect on Oct. 30, 2023

GSAR Updates

GSAR Proposed Rule with Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules.

Proposed Rule

- GSA published a proposed rule to amend the GSAR to update and clarify eligibility for non-federal entities to use FSS contracts
- This would result in an overhaul of GSAR Subpt. 538.70 to provide visibility into resources available to non-federal entities and to clarify the requirements for FSS contractors that want to do business with eligible non-federal entities under their FSS contract
- Comments close tomorrow, Nov. 17, 2023, for this proposed rule

Executive Actions

EO for Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

- President Biden issued EO 14110, which addresses and responds to concerns around AI safety and security
- This EO requires that developers of AI systems share their safety test results with the U.S. Government and pursuant to the Defense Production Act, the order requires companies who develop any model that may pose a risk to national security share those results with the Government
- This EO was published on Nov. 1, 2021

Legislative Updates

H.R. 5758 Proposed Bill on Reimbursement of Government Employees, Contractors, and the States for Government Shutdown Costs

Legislation to Extend Pay for Government Contractors

- This legislation would provide compensation to federal contractors during a lapse in appropriations
- The legislation also would reimburse federal contractors for fees, interest, and fines charged during a Government shutdown
- This legislation was referred to the House Committee on Oversight and Accountability and awaits placement on the committee calendar

H.R. 5810 Fair Pay for Federal Contractors Act

Legislation to Ensure Back Pay for Contractors Should the Government Shutdown

- This legislation would secure back pay for federal contract workers should they face a layoff without back pay during a Government shutdown
- Currently, government contractors are not guaranteed back pay in the case of a shutdown
- The legislation would cover costs associated with backpay up to \$1,442 per week
- Additionally, this legislation would require the Office of Federal Procurement Policy to submit a report on federal contractors' access to back pay

S. 2999 A Bill Providing Appropriations for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement Employees and Contractors in the Event of a Government Shutdown

Legislation Providing Funds to Customs and ICE During a Lapse in Funding

- Provides continuing appropriations for employees and contractors of U.S. Customs and Border Protection in the event of a shutdown
- Provides continuing appropriations for employees and contractors of U.S. Immigration and Customs enforcement in the event of a shutdown
- This legislation was referred to the Committee on Homeland Security and Governmental Affairs and awaits committee action

Questions and Answers

Thank you

The logo for Dentons, featuring the word "DENTONS" in white, uppercase, sans-serif font inside a dark blue arrow-shaped graphic pointing to the right.

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