

## Proposed DFARS Rule Would Make Display of DOD IG Hotline Posters Mandatory

Written by Nick Sanders

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Way back in 2007 and 2008, the FAR was significantly revised to eliminate the twenty year-old contractor “voluntary” disclosure program in favor of a new mandatory disclosure program. (For background, see our article [right here](#) .) A few months after the new “contractor disclosure program” started, we posted an update [over here](#) .

The FAR revisions mandated disclosure to the cognizant agency Inspector General, without regard to materiality. That led to a huge increase in disclosures (as compared to the volume of disclosures in the old “voluntary” program), and caused the DOD Inspector General to add staff in order to handle the workload. Moreover, the majority of the disclosures was of the garden variety “labor mischarging” type versus the headline-grabbing product substitution or falsified quality inspection report type. So the end result was the same as under the old voluntary program—the contractor credited the appropriate cost objective and that was pretty much the end of the story. It’s just that there were more players and more process steps to go through (which cost everybody more money).

From what we’ve heard and observed since then, we see no reason to change our initial assessment. Without revealing privileged information, suffice to say that we have had first-hand experience with nearly 30 contractor disclosures over the past two years. All of them were mundane, stupid, labor-charging issues. Some of them were largish, but the many were valued at less than \$25,000. And what’s even more upsetting is that many labor-charging issues were not to a single contract, but were instead to indirect cost pools or to multiple contracts—thus diluting the Government’s “damages” even more.

So if your metric is quantity of disclosures, then the new “mandatory” disclosure program is a

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great success. But if your metric is dollars of government cost recovery or dollars of quantum versus administrative dollars spent disclosing and/or supporting audits of disclosures, then maybe you're less sanguine about the situation.

So along comes a new, proposed, DFARS rule that purports to solve a problem that in reality doesn't exist, and will tend to exacerbate an already tough situation.

On March 11, 2011, the DAR Council [issued](#) a proposed DFARS rule that "would require contractors to display the DoD Hotline in common work areas."

Currently, the applicable FAR rule requires contractors to display the DOD IG Hotline poster in common work areas, but provides an exception when the contractor "has implemented a business ethics and conduct awareness program, including a reporting mechanism...." The proposed DFARS rule would eliminate that exception for DOD contractors, creating a situation where they must *both* maintain an internal reporting mechanism and display the DOD IG Hotline poster. Which either gives employees a choice of reporting mechanism or sows seeds of confusion, depending on your point of view.

Why the need for such a rule? According to the DAR Council—

GAO Report GAO-09-591, Regarding the Display of DoD Inspector General Fraud Hotline Posters by DoD Contractors, recommended that the DoD IG determine the need for defense contractors' display of the DoD IG's fraud hotline poster, including directing a contractor to display the DoD IG hotline poster in common work areas for performance of DoD contracts.

The DoD IG determined that DoD contractors, including contractors who have an ethics and compliance program that includes a reporting mechanism such as a hotline poster, need to display DoD fraud hotline posters in a common work area within business segments performing work under the contract and at contract work sites. ...

The DoD IG finds that this exemption has the potential to make the DoD hotline program less effective by ultimately reducing contractor exposure to DoD IG fraud hotline posters and

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diminishing the means by which fraud, waste, and abuse can be reported under the protection of Federal whistleblower protection laws. Some contractor's posters may not be as effective as the DoD poster in advertising the hotline number, which is integral to the fraud program. The DoD IG is also revising the DoD IG fraud hotline poster to inform contractor employees of their Federal whistleblower protections.

Well, there you have it. After an exhaustive analysis, the DOD IG determined that it would be more effective to mandate display of DOD IG Hotline posters. Never mind that the current contractor disclosure program was generating so many disclosures that the IG needed to add staff. Never mind that employees might be confused regarding which reporting mechanism to use. And never mind that, if the current volume of allegations coming to the IG increased, then even more staff would have to be added.

Oh, wait. To that last point, about adding staff. Does anybody other than we here at Apogee Consulting, Inc. think that may have been a factor in the IG's determination? Is this just another excuse for bureaucratic empire-building?

Well, maybe it *is* just us, then.