

DoD Memo Reveals Poor Scorecard for Agency's Inclusion of the UCTI DFARS Clause in New Contracts

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On February 25, 2015, the **Office of the Secretary of Defense (AT&L)** issued a memorandum containing an agency "Scorecard" for the implementation of the DFARS clause on safeguarding **Unclassified Controlled Technical Information ("UCTI")**. The final UCTI rule was published on November 18, 2013 and required the new DFARS clause 252.204-7012 which imposes requirements for (1) safeguarding UCTI that is "resident on or transiting through contractor unclassified information systems," and (2) reporting cyber incidents and UCTI compromises to be included in **all** solicitations and contracts, including those for commercial items. The **Defense Procurement and Acquisition Policy ("DPAP")** office reviewed contract clause compliance data for the first quarter of 2015 and found that **DFARS clause** 252.240-7012 was included in only 65% of new awards.

In grading **Department of Defense ("DoD")** components, DPAP assigned one of three possible grades: green if 92% or more of the newly awarded contracts contained the clause, yellow if at least 85% but less than 92% contained the clause and red if less than 85% contained the clause. DPAP showed all DoD components in red, with DCMA at the bottom with a 2% rating and DLA at the top with 82% of new awards containing the clause:

DoD Memorandum at 3. This lack of internal compliance with the UCTI rule is concerning as the UCTI rule is far more developed than most of DoD's recent cyber regulations. DoD has placed great importance and provided significant guidance on this regulation, as demonstrated by DoD's December 2014 ***Procedures, Guidance, and Information ("PGI")*** 204.73 for implementing the UCTI rule, which includes a set of frequently asked questions. For example, the PGI confirmed that the requirements only apply to data that is marked with an appropriate Distribution Statement as defined by DoD instruction 5230.24. It also provided guidance on how DoD will evaluate claims from contractors that a particular safeguarding control is either not applicable or that an alternative to the specified government control is sufficient. Similarly, the PGI provides guidance as to how cyber incident reports will be handled within DoD and notes that DoD may assign a contracting officer to assess a contractor's compliance with the safeguarding controls imposed by the UCTI rule in light of a cyber-incident report.

In keeping with DoD's interest in the implementation of these requirements, DPAP will publish a quarterly scorecard on the inclusion of the clause in new awards. Given the scrutiny that DoD components now find themselves under, contractors should expect to see a renewed effort by DoD to include the UCTI DFARS clause in ***all*** new contracts going forward.

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