

The proposed DFARS rule that was on, then off, is now back again in a new form.

As we've reported in past articles, certain high-level muckety-mucks in the Pentagon (and elsewhere) have long expressed a desire to "encourage effective use" of contractor Independent Research and Development (IRAD or IR&D). Here's [a link](#) to a 2012 article that described the situation as of that date.

More recently, DoD's "Better Buying Power 3.0" declared a renewed Pentagon focus on "increas[ing] the productivity of corporate R&D." We noted that phrase with some alarm in [this article](#)

. As we discussed, the implementing memo identified three initiatives that would be undertaken in order to accomplish the stated objective. The third initiative was described as: "Director DPAP, with ASD(A), will develop a proposed regulatory or statutory change that would preclude use of substantial future IRAD expenses as a means to reduce evaluated bid prices in competitive source selections and provide it to USD(AT&L) by July 2015."

With respect to that third initiative, we opined at the time that—

This specific action will lead to a situation where DoD will realize (perhaps for the first time in history) how much its weapon systems actually cost taxpayers. There is no budget for these weapon systems if all the development costs are included. Nunn-McCurdy breaches are just waiting to happen. Congressional and taxpayer criticism will manifest quickly. We predict disaster will follow for DoD if this specific action is successfully implemented.

Since then, DoD has attempted to rein-in contractors' IR&D spending through a regulatory change (which was another one of the three BBP 3.0 initiatives). That didn't [go well](#) for Pentagon policy and rule-makers. As we noted, though, despite a public walk-back from the precipice of micro-managing so-called "independent" R&D projects, there were more than a few hints that DoD hadn't given up its fight in the area.

And now, we are back once again talking about a Pentagon effort to micro-manage R&D spending, through a DFARS "[Advanced Notice](#) of Proposed Rulemaking" that offers the

public an opportunity to comment on and “assist in the development of a revision to the DFARS to ensure that substantial future independent research and development (IR&D) expenses as a means to reduce evaluated bid prices in competitive source selections are evaluated in a uniform way during competitive source selections.”

As stated in the ANPRM—

DoD is considering a proposed approach whereby solicitations would require offerors to describe in detail the nature and value of prospective IR&D projects on which the offeror would rely to perform the resultant contract. Then, as a standard approach, DoD would evaluate proposals in a manner that would take into account that reliance by adjusting the total evaluated price to the Government, for evaluation purposes only, to include the value of related future IR&D projects.

That approach sounds ... problematic.

The first part is actually fine. Contractors should be required to identify their IR&D projects upon which they will rely to perform the work. Doing so fosters transparency and also helps comply with the requirements of CAS 402 and 420, as interpreted in the important *ATK Thiokol* decision. We wrote about that decision

[here](#)

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But that second part? The one where a Contracting Officer or Cost Monitor or Pricing Analyst is going to “adjust the total evaluated price ... to include the value of related future IR&D projects”? Yeah, that’s not going to work. *At all*.

First of all, the value of any related future IR&D projects is an estimated value. It is subject to change based on the financial fortunes of the company and the whims of management. The value of any such projects is as fixed as Birnham Wood. (Go look up that reference. We’ll wait.)

IRAD Accounting, Take Three

Written by Nick Sanders

Thursday, 11 February 2016 00:00

If a contractor puts those notional values into its proposal, does that make those estimates certified cost or pricing data? If those notional values are certified cost or pricing data, then if the contractor spends less than “promised”—is that somehow defective pricing?

(Well, *no*. Because cost or pricing data are facts, not estimates. But you wait and see how many auditors assert those notional IR&D project values are actually cost or pricing data. You heard it here first.)

Additionally, if this proposed methodology is implemented we'll all have to deal with the fact that IRAD projects are allocated to final cost objectives using the same base as is used to allocate G&A expense. (It's commonly held that IR&D and B&P costs are part of G&A. That's not strictly true. But it's close enough for government work.) Thus, the value of any IRAD projects, for price evaluation purposes, is not the value of the IRAD projects—*the value for price evaluation purposes is in fact the value of the IRAD projects that ends up being allocated to the awarded contract after it is awarded*

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To figure out the correct value of the IR&D projects, for price evaluation purposes, you will need to know not only the value of the related IR&D projects, but also the percentage of the G&A allocation base that the proposed contract will end up being, after award. That means not only knowing the contract value of the proposed contract, but also knowing the contract values of all the other contracts that will comprise the cost input base used for G&A expense allocation.

In the future.

Perhaps years in the future. For the entire period of performance of the contract for which the contractor is submitting its proposal.

Yeah, you go figure that out. We'll wait here (again).

This is a bad idea and you should tell the DoD that it's a bad idea.

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And you should tell the policy makers and rule-makers why it is a bad idea.

In this case, you will have more than one opportunity to do so. DoD is holding a public meeting on the topic. According to the ANPRM, “a public meeting will be held in the General Services Administration (GSA), Central Office Auditorium, 1800 F Street NW., Washington DC, 20405, on March 3, 2016, from 12:00 p.m. to 4:00 p.m., local time. The GSA Auditorium is located on the main floor of the building.” But you just can’t waltz in there; you have to follow protocol, if you want to have your comments heard. The ANPRM has all the details as to how to do that.

In addition, you can also submit written comments between now and April 8, 2016. Again, the ANPRM has the salient details for submitting your comments.

We here at Apogee Consulting, Inc., sincerely hope you will avail yourselves of the opportunities to make your voice heard on this important topic.