

## Accounting for Offsets – New Proposed DFARS Rule

Written by Nick Sanders  
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We note, for the record, that the interim DFARS rule we wrote about [here](#) has been reissued as a [proposed rule](#). This is interesting. In our experience the vast majority of interim rules proceed directly to a final rule. Indeed, the issuance of an interim rule (i.e., one promulgated without the “benefit” of public input) is typically justified based on some type of urgency. (As this one was.)

Apparently that urgency has decreased since promulgation of the interim rule, and now there is time to walk back into the normal rulemaking process.

Accordingly, you will have an opportunity to provide your comments on the proposed rule, in addition to comments already submitted on the interim rule. If you don’t sell internationally you likely won’t care; but if you do then you probably will care about the rule quite a bit. We suspect you’ll like it.

The proposed rule would make it easier for contracting officers to find that the costs of “indirect offsets” are fair and reasonable. The DFARS would be revised to state (in part)—

Indirect offset costs are deemed reasonable for purposes of FAR parts 15 and 31 with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset a condition of the FMS acquisition. FMS customers are placed on notice through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

It also exempts contractors from having to provide certified cost or pricing data with respect to indirect offsets. (If you don’t know what an indirect offset is, you can check out our earlier article on this topic. Or you can read the proposed rule, because it now defines the term with some specificity.)

As we noted in our previous article, offsets are hard to account for. This proposed rule won’t make it any easier, but it will reduce the burden contractors will face when trying to price and

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negotiate them.