

Recent Regulatory Changes

Written by Nick Sanders
Monday, 09 July 2018 00:00

We've been noting recent changes to the FAR and DFARS, but have held off writing about them—primarily because nothing we saw seemed earth-shattering. This article will summarize those changes. Perhaps if no one change merits an article, the aggregated changes will.

[FAC 2005-99](#) was published June 5, 2018. The Federal Acquisition Circulars are number from the date of the last loose-leaf publication. Seems to be a bit of an antiquated approach, doesn't it? We mean, it's been more than a decade since the last loose-leaf FAR was published; does anybody really expect to see another one any time soon? Only the Federal government would continue to publish—and update—a loose-leaf binder of regulations in this digital age. Might want to rethink your numbering approach, FAR Secretariat. You know, join the 21st Century?

[FAR Case 2017-009](#), containing a proposed rule to “expand special emergency procurement authorities for acquisitions of supplies or services that facilitate defense against or recovery from cyber attack, provide international disaster assistance under the Foreign Assistance Act of 1961, or support response to an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act” was published June 26, 2018. The comment period is still open, for those interested.

Four final DFARS rules were issued on June 29, 2018.

DFARS Case [2015-D024](#) impacts definitization of Undefined Contract Actions (UCAs). It addresses how COs should use the Weighted Guidelines to determine how much profit the contractor should be entitled to. It's a bit of a confusing rule. On one hand it directs COs to “document their consideration of the reduced risk” for actual costs incurred during the period between UCA award and definitization. On the other hand, it directs COs to “consider the reasons for any delays in definitization in making their determination of the appropriate assigned value for contract type risk” and permits the CO to add an additional one percent profit to the contract type risk factor in the Weighted Guidelines. If you are definitizing a UCA, or have just received one and will need to definitize it, then read the new rule.

DFARS Case [2018-D030](#) eliminated “the DFARS clause 252.216-7010, Requirements, the Alternate clause, the associated clause prescription at DFARS 216.506, and a cross-reference

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to the clause at DFARS 247.271-3(p),” because they are “duplicative of an existing Federal Acquisition Regulation (FAR) clause.” Glad they figured that out, finally.

DFARS Case [2018-D032](#) eliminated “the DFARS clause 252.215-7000, Pricing Adjustments, the clause prescription at DFARS 215.408, and the associated cross-references at DFARS 208.404, 212.301, 214.201, 216.506, 225.870, and introductory text for various 252.215 clauses to adjust clause prescription references,” because they are also “duplicative of an existing Federal Acquisition Regulation (FAR) clause rendering the DFARS clause unnecessary.”

DFARS Case [2015-D028](#) finalizes (with changes) an interim rule on determining price reasonableness for indirect offset costs in an FMS transaction. (Short answer: accept the contractor’s price.) If you are involved in FMS sales and/or offset agreements, this is a rule you’ll want to review. Otherwise, pass.

On the same day, six proposed DFARS rules were published for public comment. We are not going to link to them. Google is your friend. However, we will list them. They are—

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DFARS Case 2016-D032, Electronic Submission and Processing of Payment Requests and Receiving Reports

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DFARS Case 2017-D010, Inapplicability of Certain Laws and Regulations to Commercial Items

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DFARS Case 2018-D009, Only One Offer

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DFARS Case 2018-D025, Modification of DFARS Clause Surge Option

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DFARS Case 2017-D014, Use of Commercial or Non-Government Standards.

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DFARS Case 2017-D005, Submission of Summary Subcontract Reports.

Some of those proposed rules are fairly interesting and have implications that may be worthy of a comment or two (e.g., “only one offer”).

In addition to the official regulatory changes noted above, there were also a couple of less formal pieces of guidance issued.

The DoD issued Class Deviation [2018-O0016](#) on June 26, 2018, entitled “Defense Commercial Solutions Opening Pilot Program.”

The DoD also issued Class Deviation [2018-O0017](#) on June 29, 2018, entitled “Determining Contract Type for FMS Contracts.”

Finally, the Director of Defense Pricing/Defense Procurement and Acquisition Policy issued a [guidance memo](#) entitled “Negotiations of Sole Source Major Systems for U.S. and U.S./FMS Combined Procurements” on June 28, 2018.

Looking over the list of regulatory changes, we see a bit of an emphasis on Foreign Military Sales. If you are a contractor that plays in that sandbox, you may want to take note.

But for the rest of us, *meh*. Small steps....

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As always, we are deeply indebted to Bob Antonio and his [WIFCON](#) website, who tracks and publishes regulatory changes as they happen. Without him, much of this blog—and certainly this article—would simply not happen. If you are not visiting WIFCON (“Where in Federal Contracting”) on a regular basis, you are missing out on a tremendous resource.