On the same day that two DFARS rules went bye-bye, ostensibly in response to the President's Executive Order to reduce unnecessary regulatory burdens on the public, the DAR Council published six proposed DFARS rules. Some of the rules purportedly streamline the current regulations; at least one rule adds onerous requirements.

Let's discuss, shall we?

1.

DFARS Case **2017-D034** would, if implemented as drafted, would require DoD contractor employees to complete Level 1 anti-terrorism training, as discussed DoD Instruction (DoDI) O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards (available **here**). "The training is required within 30 days of requiring access and annually thereafter and must be completed either through DoD-sponsored and certified computer or web-based distance learning instruction, or under the instruction of a qualified Level I antiterrorism awareness instructor." Contractors should make sure to estimate the costs of compliance when bidding a contract that requires access.

1.

DFARS Case **2018-D011** would permit for more than five offerors on solicitations issued using two-phase design-build selection procedures for indefinite-delivery, indefinite-quantity contracts that exceed $4 million. Currently, permitting more than five offerors requires approval by the Head of Contracting Activity.

1.

DFARS Case **2018-D028** would eliminate the current clause 252.247-7024 ("Notification of Supplies By Sea") by combining that language within the language of another clause: 252.247-7023 ("Transportation of Supplies By Sea"). This streamlining effort is based on a recommendation from the DoD Regulatory Reform Task Force, which received two public comments on these clauses. This action is actually a bit of a compromise, as the two comments recommended eliminating both clauses altogether—pointing out that the clauses were based on a 1904 Statute. ("Both respondents recommended DoD remove these clauses, as they are based on the requirements of the Cargo Preference Act of 1904 (10

U.S.C. 2631
), which was written at a time before many modern forms of cargo transportation were invented and overly burdens the DoD supply chain to use US-flag ships. The respondents also suggested that DoD follow the less burdensome Cargo Preference Act of 1954 (
46 U.S.C. 1241
(b)).") However, the Regulatory Reform Task Force declined to do so—likely because they were not a Statutory Reform Task Force.

1.

DFARS Case **2017-D011** would implement a requirement from the 2017 National Defense Authorization Act (NDAA) to "apply domestic source requirements to acquisitions at or below the simplified acquisition threshold when acquiring athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces, and add Australia and the United Kingdom to the definition of the 'National Technology and Industrial Base.'" In other words, such acquisitions shall be subject to the Berry Act and must be provided only by domestic sources. *Okay, then*.

1.

DFARS Case **2018-D007** would "sunset" certain requirements imposed by Congress on DoD via the 2015 NDAA. The rule applies primarily to photovoltaic devices acquired under certain contracts (e.g., energy savings performance contracts, utility energy service contracts, or private housing contracts.) As explained in the proposed rule, "This proposed rule essentially reinstates the DFARS regulations as they existed prior to publication of the final rule under DFARS Case 2015-D007 on November 20, 2015 [with certain exceptions]."

1.

DFARS Case **2017-D019** would impact contract financing payments. We'll discuss it separately, in the next article.

This has been your "new DFARS stuff" article. We hope you enjoyed it.