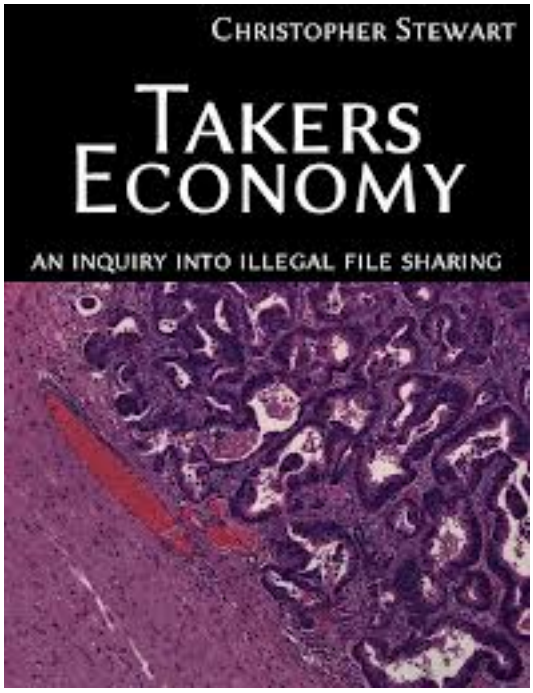

The Defense Federal Regulation Supplement (DFARS) contains rules that apply primarily to DOD contractors. These rules are in addition to the requirements of the Federal Acquisition Regulation (FAR). The DFARS requirements supplement the FAR requirements. Thus: the "S" in the DFARS.

Recently, the Defense Acquisition Regulation (DAR) Council issued two proposed rules for public comment. We want to bring them to your attention in the (perhaps vain) hope that you will be inspired to submit comments to the DAR Council.

The **first proposed DFARS rule** implements Section 862 of the 2012 National Defense Authorization Act (NDAA), which required the DOD "to encourage contractors to develop science, technology, engineering, and mathematics (STEM) programs. STEM programs are, programs or initiatives, either formal or informal, which encourage the pursuit of education and experience in the Science, Technology, Engineering, and Mathematics disciplines." Accordingly, the DAR Council proposed to add a new Subpart to the DFARS—226.72—appropriately entitled "Encouragement of Science, Technology, Engineering, and Mathematics (STEM) Programs."

As the DAR Council noted, "There are no reporting, recordkeeping or other compliance requirements associated with this rule. This rule only encourages contractors, to the maximum

extent practicable, to develop science, technology, engineering, and mathematics (STEM) programs. The contractor is not required to develop STEM programs or to report on this activity." Instead, the proposed new DFARS Subpart establishes the policy position directed by the FY 2012 NDAA, and also creates a new solicitation provision/contract clause to be inserted in all RFPs and in all contracts. The proposed clause encourages the activities that Congress directed DOD to encourage. There's a catch, however.

The catch is that the proposed clause states that "The Contractor shall assume the responsibility for all the costs and investments in support of the STEM disciplines." It also states that "The Contractor will not be reimbursed for any costs incurred or associated with the support of the STEM disciplines. Any costs incurred for supporting the STEM disciplines are unallowable under this contract."

We have two immediate thoughts on this proposed rule, which we hope will find their way into public comments submitted to the DAR Council.

Our first thought is that it is disingenuous and perhaps even contrary to Congressional intent, to both "encourage" contractors to engage in STEM-related activities, while at the same time declaring that if the contractor does engage in such activities, the costs are not allowable contract costs. One is tempted to assert that the two policy positions are contrary to one another. Declaring that STEM-related costs are unallowable seems to be faint encouragement, indeed.

Our second thought is that, if the DAR Council truly intends to make such costs unallowable, the place to do so is in DFARS Subpart 231 ("Contract Cost Principles and Procedures") and not in Subpart 226. Putting the cost disallowance in Subpart 226 strikes us as an attempt to hide the policy position taken by the Defense Department. If the rule-makers want to declare such encouraged costs to be unallowable, then they should do so in the proper regulatory location.

Public comments must be submitted before April 29, 2013, via one of the methods listed in the proposed rule (link above).

The **second proposed DFARS rule** implements the wishes of the Honorable Shay Assad to

penalize contractors for the healthcare costs of ineligible dependents. We've ranted about this particular issue before, most recently **right here** . We said—

We have two or three members of the Senior Executive Service (SES) who have embarked on a course of action that wastes the time, money, and resources of all involved. They have created a problem that exists only in their own minds, and refuse to let it go.

Our opinion on this entire issue remains unchanged.

The proposed rule will revise the DFARS Cost Principle at 231.205-6—

…to implement the Director of Defense Pricing policy memo 'Unallowable Costs for Ineligible Dependent Health Care Benefits,' dated February 17, 2012. The rule adds paragraph 231.205-6(m)(1) to explicitly state that fringe benefit costs incurred or estimated that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

What a shame.

As with the first proposed rule, public comments must be submitted before April 29, 2013, via one of the methods listed in the proposed rule (link above).