

ALERT

DOD Proposes to Update Grant and Cooperative Agreement Regulations

November 9, 2016

WHAT: The Department of Defense (DOD) issued a set of six proposed rules to update the DOD Grant and Agreement Regulations (DODGARs). These updates are intended to implement Government-wide guidance on administrative requirements, cost principles, and audit requirements applicable to federal grants and cooperative agreements. In general, the proposed rules seek to update, standardize and clarify the DODGARs for the benefit of both DOD administrators and award recipients.

WHEN: DOD issued the proposed rules on November 4, 2016. Comments on all six proposed rules are due February 6, 2017.

WHAT DOES IT MEAN FOR INDUSTRY: The proposed rules change certain requirements for DOD Components and attempt to provide additional clarity on the regulations for grant and cooperative agreement award recipients. Because the proposed rules seek the inclusion of standard terms and conditions in DOD grants and cooperative agreements, in addition to defining certain key acquisition terms, they could potentially impact award recipients by altering the status quo in this area of DOD procurements. Interested parties should review the proposed rulemaking and submit comments where their interests are affected.

OUR ANALYSIS:

The DODGARs update is comprised of six individual proposed rules, each addressing a different aspect of the regulations governing DOD grants and cooperative agreements:

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Practice Areas

Federal Grants and Cooperative
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- In the first proposed rule, DOD proposes to add a new part to the Code of Federal Regulations that would direct users to various regulations.
- The second proposed rule provides a standard format for organizing the content of DOD grant and cooperative agreement awards and modifications to those awards. The standard format concerns administrative details, such as what should be included on cover pages, policies for including award-specific terms and conditions, and procedures to follow when using general terms and conditions.
- In the third proposed rule, DOD proposes to add seven new DODGARs sections which would address the organization and content included in general terms and conditions of DOD grants and cooperative agreements. These terms and conditions pertain to a broad range of areas, including financial and program management; property administration; recipient procurement procedures; financial, programmatic, and property reporting; and subawards. The proposed rule also lays out standard wording that is intended to “promote ease of understanding.” For example, the proposed standard wording would use “you” to mean the recipient and “we” to mean the Government. Additionally, under the proposed rule, the Government would be permitted to incorporate standard wording by reference.
- The fourth proposed rule would add a new DODGARs part that would provide consistent formatting and standard wording for the general terms and conditions related to national policy requirements that DOD includes in its grant and cooperative agreement awards. DOD Components would be required to use the standard wording prescribed by the rule unless an applicable statute or regulation authorized alternate wording.
- The fifth rule proposes to add a new DODGARs part that would centrally define certain terms in an effort to clarify the regulations for DOD personnel as well as award recipients and auditors. This proposed rule may result in the most noticeable changes to the current DOD grant and cooperative agreement environment as it could potentially alter long-held, yet erroneous, understandings of key terms. For example, the rule proposes adding a definition for the term “approved budget” to the DODGARs that would include the non-Federal share of project costs, such as any matching funds or cost sharing required under the award. Another example is the inclusion of a definition for the term “small award,” which would mean an award that does not exceed the simplified acquisition threshold, and is thus subject to fewer DOD requirements.
- The sixth rule, which is purely administrative in nature, proposes removing two existing DODGARs parts and revising four others to conform them to the newly proposed parts as well as applicable statutes, regulations, or policies that have been issued, revised, or repealed since the last round of relevant DODGARs revisions.