

(d) *Indirect or inadvertent residues.*
[Reserved]

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DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 211, 212, 243, and 252

[DFARS Case 2003-D081]

Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish policy for unique identification and valuation of items delivered under DoD contracts.

DATES: Effective April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Directorate, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350. Please cite DFARS Case 2003-D081.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 75196 on December 30, 2003, containing policy that requires contractors to provide unique item identification (UID) and the Government's unit acquisition cost for items delivered under DoD contracts. Thirteen sources submitted comments on the interim rule. The following is a discussion of the comments and the changes made to the rule as a result of those comments:

1. *Comment:* A respondent stated that the implementation date of January 1, 2004, was too aggressive. The respondent recommended a later implementation date that would allow time in which to alert both Federal agencies and Federal contractors about the specifics of the new rule.

DoD Response: DoD agrees that the implementation schedule was aggressive. However, the rule is considered to be a strategic imperative. The implementation schedule could not be slipped.

2. *Comment:* We have been instructed to identify "to be determined" in the clause fill-in. We have also been instructed to contact our requirements (logistics) counterparts for their

determination if this clause applies. According to our counterparts, they don't have the technical training or knowledge to make that determination. Also, there is currently no training or knowledge in the contracting world on a realistic cost for this information.

DoD Response: The clause must go into all contracts that require the delivery of "items" as defined in the clause, unless an exception applies. Items valued at or above \$5,000 must be marked with UID. The fill-ins are for items that meet other specified conditions, as well as embedded items that meet specified conditions. The implementing guidance in section 211.274 has been reworded for clarity to specify that the requiring activity determines what embedded items, subassemblies, or components require UID. There is less technical training or knowledge required than the interim rule implied; however, additional information is available at <http://www.acq.osd.mil/dpap/uid>.

3. *Comment:* DoD should give special consideration to communicating, aiding, and making available, training to all suppliers that will need to comply with this requirement—whether as prime contractors, or as subcontractors at any tier.

DoD Response: Concur. DoD is engaged in a large communication effort through its UID Program Office. The UID Web site at <http://www.acq.osd.mil/dpap/uid> should be consulted for information and resources that are available.

4. *Comment:* Both government buying offices and prime contractors should be encouraged to make special efforts to assist small and small disadvantaged, minority- or women-owned firms and make accommodations as needed to help them achieve the goals of this new requirement.

DoD Response: Concur. Small businesses will find that there are a number of vendors, many of which are small businesses themselves, that can provide UID marking assistance. Additionally, the final rule permits exceptions to marking requirements for items acquired from small business concerns when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

5. *Comment:* Not all requirements are generated from DoD. How does this requirement apply when a foreign government is the customer? A related comment was whether UID is applicable to Foreign Military Sales (FMS) contracts and whether our FMS customers were consulted about UID

applicability and advised of potential cost impacts.

DoD Response: Items valued at or above \$5,000, or items delivered to DoD that meet other specified conditions, must be marked with UID. There is no exception for FMS contracts. This rule has been developed with assistance from our allies and in consideration of international standards.

6. *Comment:* Does UID apply to items that we lease but of which we never take ownership?

DoD Response: Yes. Items valued at or above \$5,000, or items delivered to DoD that meet other specified conditions, must be marked with UID.

7. *Comment:* Two respondents asked whether UID and valuation apply to classified or COMSEC contracts. One respondent suggested that the final rule include instructions to require that all such issues be directed to the contracting officer for resolution.

DoD Response: Yes, the UID and valuation apply to classified contracts, unless there is an exemption cited in program directives.

8. *Comment:* Does UID apply to furniture that has an acquisition cost of \$5,000 and above?

DoD Response: Yes, all items over \$5,000 in value require unique identification.

9. *Comment:* The clause should include a statement that the contractor must comply with the most current version of MIL-STD-130.

DoD Response: Concur. After much consideration, it was considered best to refer to the version of MIL-STD-130 that is cited in the contract Schedule. This allows for updating, if necessary, at the time of award.

10. *Comment:* Is UID really appropriate when, in all likelihood, it probably will not survive the manufacturing process?

DoD Response: If an item is valued at or above \$5,000, and it is delivered to DoD, it must be marked with UID. One of the purposes of UID is to be able to track items that may be warehoused for a period of time prior to being incorporated into a manufactured end item. The property record that was created when the item was delivered should be annotated with the item's disposition when it is incorporated into a manufactured item.

11. *Comment:* One respondent believes that, in an effort to save taxpayer dollars, items required for their own base operations, that are never used/received by the warfighter (*i.e.*, is not a spare part), should be excluded.

DoD Response: Do not concur. Items valued at or above \$5,000, or items meeting other specified conditions that

are delivered to DoD, must be marked with UID. Although our primary mission is the warfighter, sound property management and accountability are integral to our responsibilities to the taxpayer.

12. *Comment:* Paragraph (c)(3) of clause at 252.211-7003 states, "The contractor shall (i) mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers as specified elsewhere in the contract." Where in the contract did you intend this to be specified?

DoD Response: The phrase "as specified elsewhere in the contract" has been excluded from the final rule.

13. *Comment:* The DoD Guide to Uniquely Identifying Items, Version 1.3, Nov 25, 2003, p. 18, indicates that the enterprise assigning serialization to an item makes the decision regarding which construct to use to uniquely identify items, as well as use of the associated business rules. The guide also suggests that it should not matter which of the three constructs the contractor uses because DoD should be able to read any of them. If that is the case, is it necessary to specify which type must be used in the contract?

DoD Response: The final rule clarifies that the determination of which construct to use is made by the contractor.

14. *Comment:* In the solicitation phase, would it not be better to allow contractors to propose which data qualifier they prefer to use rather than specifying one in the solicitation?

DoD Response: The phrase "as specified elsewhere in the contract" has been excluded from the final rule.

15. *Comment:* What "Data Item Description" covers UID? Further, is a new Data Item Description for UID being developed, or which existing one should we use?

DoD Response: The Data Item Description can be found under "References" on the UID Web site at <http://www.acq.osd.mil/uid>.

16. *Comment:* With regard to DFARS 211.274-2, it is not clear from the interim rule when the contract line items/subline items (CLINs/SLINs) or contract data requirements list (CDRL)

will be updated to reflect the delivered items that require UID.

DoD Response: The intent is that the CLIN/SLIN structure should reflect the UID requirements at contract award. This may be the result of the procurement request and solicitation CLIN/SLIN structure, or it may be the result of information provided in the contractor's proposal in response to the solicitation. However, if this is not the case, the contract should be modified to reflect the CLIN/SLIN structure as necessary prior to delivery of the items requiring UID.

17. *Comment:* A respondent requested that DoD policy on applying UID to existing contracts remain as currently stated to apply UID to existing contracts "where it makes business sense."

DoD Response: Concur. This policy has not changed.

18. *Comment:* Considering that the new UID labeling requirement allows for the use of commonly accepted commercial marks for items that are not required to have unique identification, will DoD reconsider the application of the UID labeling requirement to contracts for commercial items under FAR Part 12?

DoD Response: The requirement for commonly accepted commercial marks for items that are not required to have unique identification has been deleted from the rule. Additionally, the final rule permits exceptions from UID requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

19. *Comment:* Is it DoD's intention to apply the UID labeling requirement to product orders placed under another agency's contract vehicle, such as GSA's Federal Supply Schedule or another agency's multiple award indefinite-delivery indefinite-quantity contract?

DoD Response: Yes. The final rule makes the clause at DFARS 252.211-7003 mandatory for all solicitations, contracts, and delivery orders. DoD believes that inclusion of the clause in delivery orders under Federal Supply Schedule (FSS) contracts is consistent with the provision at 252.211-7003, Marking, that is currently in FSS

contracts allowing ordering activities to specify marking requirements in delivery orders.

20. *Comment:* Does the UID labeling requirement apply to entities that resell a manufacturer's product to DoD?

DoD Response: Yes.

21. *Comment:* Does DoD recognize Telcordia as an issuing agency?

DoD Response: Yes, DoD recognizes IAC "LB" for Telcordia.

22. *Comment:* Will DoD accept the UID in a MicroPDF417 symbol? The majority of North American Telecommunications Service Providers require equipment manufacturers to CLEI Code their products. Telcordia GR-383-CORE identifies MicroPDF417 as the required symbology for CLEI Coded product. We currently use MicroPDF417 in our designs and would require significant changes to implement Data Matrix 200. There is not sufficient space for two symbols, particularly when both will have the same information. The MH10.8.3 and MH10.8.2 data syntax will be the same for both symbologies. Further, MicroPDF417 has the benefit of being either square or rectangular in shape depending on how it is specified. This provides increased flexibility when working with space-constrained product. Scanners capable of reading Data Matrix 200 are also capable of reading MicroPDF417, but scanners capable of reading MicroPDF417 are not always capable of reading Data Matrix 200.

DoD Response: No decision has been made as to DoD acceptance of the MicroPDF417 symbol.

23. *Comment:* Is the part number required in the 2D symbol if we use serialization within the enterprise identifier? The examples we see for serialization within the enterprise are not clear. We will be using data identifier 18V, ANSIT1.220 issuing agency "LB", an enterprise identifier of "WECO". The serial number will use the data identifier "S" to define our unique serial number to form the UID. Do the data strings shown below meet the UID requirement?

CLEI coded product:

[] >Rs06 Gs18VLBWECO GSS123456789012345678GS11PAABBCCD1E1
Rs EOT.

Non-CLEI coded product:

[] >Rs06 Gs18VLBWECO G
SS123456789012345678 Rs EOT.

DoD Response: No. The only data identifier available for use in Construct

#1 in this case is "25S", which is defined as "18V" + unique serial

number (unique within the enterprise). The syntax would be:

Non-CLEI coded product (Serialization within the enterprise, Construct #1)

[] >Rs06 Gs25SLBWEEO123456789012345678Rs EOT.

UID would be: LBWEEO123456789012345678

CLEI coded product (Serialization within the part, or product, number, Construct #2):

[] >Rs06 Gs18VLBWEEOGS11PAABBCCD1E1

GS S123456789012345678 Rs EOT.

Concatenated UID would be: LBWEEOAABBCCD1E1123456789012345678

24. *Comment:* Does the order of the data fields matter? Telcordia has defined the CLEI Code as the first data field within the data symbol, and that is our current data format. Is the use of data identifiers sufficient to assemble the UID from the data string regardless of order?

DoD Response: The data fields should appear at the beginning of the syntax in order of concatenation: Construct #1: 25S, Construct #2: 18V+11P+S.

25. *Comment:* Must the UID label be scannable in service? If so, what exceptions would be considered?

DoD Response: Yes. The UID label must be scannable in service. There are no exceptions.

26. *Comment:* What is the labeling requirement for the first level product package label (P2 label)? Will this label require that the UID be encoded in a 2D symbol? If so, would this be a PDF417 symbol, Data Matrix 200, or other?

DoD Response: The labeling requirements are those specified in MIL-STD-129P.

27. *Comment:* What is the minimum data set for the UID on the shipping label, and is a 2D symbol required? We currently do not include product serial number information on our shipping labels. Adding UID information to the shipping label would require significant IT system changes.

DoD Response: The labeling requirements are those specified in MIL-STD-129P.

28. *Comment:* Several comments were received regarding the use of radio frequency identification (RFID) technology.

DoD Response: RFID technology is being addressed in separate DoD policy. The RFID policy, which addresses the labeling for shipping and packaging, is being developed in close coordination with the UID Program Office. RFID requirements will not replace or supersede UID requirements.

29. *Comment:* Is it DoD's understanding that the Christian Doctrine may apply, or will the requirement to mark items over \$5,000 be applicable only to those contracts in which DFARS 252.211-7003 is cited?

DoD Response: DoD does not believe the Christian Doctrine would apply in the case of a contract that failed to include the clause at 252.211-7003.

30. *Comment:* Will drawings have to be changed prior to adding the physical UID marking to items? If not, will items be rejected for not conforming to the drawing? If so, are drawing changes to be bid the first time a solicitation is received for a particular item?

DoD Response: Defining the set of parts to mark, the method in which to mark them, the associated engineering analysis required, in addition to the process/program documentation, is a coordinated concert of activities that must occur simultaneously and with fluidity. The involvement of all entities is crucial as each lends a viewpoint to marking from different technological, logistical, and supply perspectives.

There must be close coordination with the DoD requiring activities, original equipment manufacturers, and vendors in order to minimize the manpower burden to accomplish the required changes on engineering documentation and to initiate the necessary changes to existing manufacturing and maintenance processes. This is true for a marking program on either a new end item or on a legacy end item.

Collaborative methods, or best practices that could be considered and are being prototyped today include the following: (1) Replacing existing data plates with UID labels; (2) Issuing a global engineering change notice; (3) Issuing part marking work orders into the existing manufacturing process; and (4) When the necessary marking information and criteria do not change the form, fit, or function of the part, the change does not require an immediate drawing update but rather can be accomplished by a coversheet with the marking instructions, thus permitting consolidation of drawing requirements.

31. *Comment:* Section 211.274-1(a)(3) is worded such that all lower-level assemblies of an item on a CDRL require UID marking. The respondent suggests rewording the section to "Subassemblies, components, and embedded parts identified on a Contract Data Requirements List or other exhibit."

DoD Response: Section 211.274-1(a)(3) of the interim rule contained guidance to the contracting officer. Paragraph (c)(1)(iii) of the clause at 252.211-7003 identifies the marking

requirement for subassemblies, components, and embedded parts. It reads:

"(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number ____."

32. *Comment:* Even though the rule has been revised to clarify the responsibility of the vendor, it is our interpretation that DoD must assume the primary responsibility for communicating the unique identification at time of contract.

DoD Response: Concur. This should be accomplished through the clause at 252.211-7003.

33. *Comment:* Electronic invoicing, mandated by DFARS clause 252.232-7003, will be delayed to accommodate the UID requirements. Since many companies now are changing their accounting systems in order to be compliant with Wide Area WorkFlow, an additional requirement that UID's are included on invoices clearly will cause delays in the electronic billing system.

DoD Response: Do not concur.

Currently contractors can separately invoice and report UID.

34. *Comment:* Small business suppliers may be required to create new systems for identification and marking of their products. This will result in increased costs to small businesses.

DoD Response: Small businesses will find there are a number of vendors, many of which are small businesses, that can provide UID marking assistance at low cost. In addition, the final rule permits exceptions to marking requirements for items acquired from small business concerns, when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

35. *Comment:* Extension of the UID requirement to the building trade industry, including electrical and mechanical products, will impose a severe business and economic hardship on large and small businesses alike to implement the marking and identification requirement on products, plus the supporting documentation to shipping documents and invoices.

DoD Response: As stated in the DoD response to Comment 34 above, there are a number of vendors that can provide UID assistance at low cost. The

final rule permits exceptions to UID requirements for commercial items and for items acquired from small business concerns, when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery. The required supporting shipping documentation represents only a minimal increase in current DoD requirements for completion of DD Form 250, Material Inspection and Receiving Report.

36. *Comment:* One respondent suggested that DoD include "Consumer Electronics Alliance" in the examples of commonly accepted commercial marks.

DoD Response: The requirement for commonly accepted commercial marks for items that are not required to have unique identification has been deleted from the rule.

37. *Comment:* Please clarify that the "Issuing Agency Code" is derived and not "marked" on the item.

DoD Response: A change is included in the final rule to clarify that Issuing Agency Code is not marked.

38. *Comment:* One respondent noted that "AIT" means automatic identification technology.

DoD Response: Concur. The change is included in the final rule.

39. *Comment:* Please add "Department of Defense Address Activity Code (DoDAAC)" to registration (or controlling) authority.

DoD Response: Do not concur. An Issuing Agency Code (IAC) is being requested for DoDAAC. DoDAAC should not be added until the IAC is approved.

40. *Comment:* One respondent suggests rewording Section 252.211-7003(c)(3)(1)(A) as follows: "Data Identifiers (DIs) (Format 06), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance."

DoD Response: Concur. The change is included in the final rule.

41. *Comment:* A respondent suggests rewording Section 252.211-7003(c)(3)(1)(C) as follows: "Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution "DD" format for use until the final solution is approved by ISO JTC1/SC 31. The DoD collaborative solution is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at <http://www.acq.osd.mil/uid>, and;"

DoD Response: Concur. DFARS 252.211-7003(c)(3)(i)(C) has been revised to essentially capture the comment.

42. *Comment:* The rule poses a substantial problem for commercial suppliers and service providers. The problem is that many commercial companies use item identification markings that differ significantly from the Department's prescribed unique identification markings.

For these companies to continue to do business with the Department, they will either need to establish separate assembly lines and procedures to process DoD orders using the Department's unique markings, or overhaul and convert their existing systems to meet the Department's requirements. For existing DoD suppliers and service providers, either of these approaches would pose a very expensive proposition. For potential new entrants to the Defense market, the requirements may pose a prohibitive barrier.

DoD Response: This rule is considered to be a strategic imperative. DoD acquires a large number of items from commercial suppliers and these items can not be excluded from the UID requirements. However, the final rule permits exceptions to marking requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

43. *Comment:* The interim rule may be read as burdensome and otherwise inconsistent with commercial practice to require vendors to change their delivery processes to accommodate Government-unique acquisition cost requirements. Some Department personnel have publicly stated that existing practices for completing DD 250 acceptance forms would suffice to support the acquisition unit cost requirement imposed by the interim rule. But that is not clear in the rule itself. We request that the rule be clarified to clearly read that vendors' existing DD 250 practices that currently meet DD 250 requirements will satisfy the interim rule's unit acquisition cost requirements.

DoD Response: Do not concur. There are no new or additional burdens imposed on vendors as a result of the "Government's unit acquisition cost" requirements. Currently, vendors are required to put a "price" on the DD 250. There is nothing in the rule to suggest that existing DD 250 practices would change.

44. *Comment:* Two respondents stated that imposing the interim rule's requirements in commercial acquisitions at this time is inconsistent with the Federal Acquisition Streamlining Act of 1994 ("FASA"),

which mandates that Government agencies rely to the maximum extent practicable on commercial products and services to fill the Government's needs. In our view, imposition of the interim rule at this time in commercial acquisitions is neither required by statute nor consistent with customary commercial practice.

DoD Response: DoD does not concur that UID requirements are inconsistent with FASA. FASA does not restrict DoD's ability to define its needs and requirements for supporting the warfighter. However, the final rule permits exceptions to marking requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery of the item.

45. *Comment:* One respondent suggested that implementation of the rule for purposes of commercial item acquisitions be changed from January 1, 2004, to March 1, 2005. The respondent further recommended that, prior to the implementation date, the Department establish a working group that will include participants from commercial industry to determine what methods would be least intrusive to commercial practice, while operating to satisfy the Department's needs. The current interim rule seems to impose most of the burden, if not all, on the vendor, and may result in vendors having to adopt a "Government only" line of products at significant expense to both the vendor and the Government.

DoD Response: Do not concur. DoD acquires a large number of commercial items, and these items cannot be excluded from UID requirements. However, the final rule permits exceptions to marking requirements for commercial items when it is more cost effective for the Government requiring activity to assign, mark, and register the UID after delivery.

46. *Comment:* Does the rule apply to real property in DoD buildings and facilities?

DoD Response: Yes. Items valued at or above \$5,000, or items that are delivered to DoD meeting other specified conditions, must be marked with UID.

47. *Comment:* Does the rule apply to electrical and mechanical equipment and building components making up a building and building systems?

DoD Response: Yes. Items valued at or above \$5,000, or items that are delivered to DoD meeting other specified conditions, must be marked with UID.

48. *Comment:* In our February 27, 2004, letter to the Director of Defense Procurement, we expressed our concern that not all UID implementation costs

may be recovered under existing accounting procedures. We encourage the Department to give early consideration to addressing this issue. We stand ready to meet with your representatives at your convenience.

49. *DoD Response:* DoD is willing to further discuss and examine whether all UID implementation costs may be recovered under existing accounting procedures.

50. *Comment:* In section 211.274–2(b)(2), Government's unit acquisition cost for cost type line, subtitle, or exhibit line items is the contractor's estimated fully burdened unit cost. In informal discussions with the Department's staff, we understand that this is intended to include a representative element of profit or fee. We suggest that this be clarified in the List of Frequently Asked Questions or in the Guide to Uniquely Identifying Items.

DoD Response: Concur. DoD will add to the List of Frequently Asked Questions an item that indicates that "fully burdened unit cost to the Government" would include all direct, indirect, G&A costs, and an appropriate portion of fee.

51. *Comment:* With regard to section 211.274–3, Contract clause, one respondent noted that this section has been improved for both industry and the government. It addresses "items" requiring UID and clarifies application where a CDRL/Exhibit is required for subassemblies, components, or embedded items. The respondent recommends that, in order to strengthen this principle, several illustrative examples be included in the DoD Guide to Uniquely Identified Items.

DoD Response: Concur. Examples will be included in the next version of the DoD Guide to Uniquely Identified Items.

52. *Comment:* In the clause at 252.211–7003(c)(1)(iii), there are requirements regarding subassemblies, components, and parts embedded within items specified in Exhibits or CDRLs. It should be noted that not all embedded items fit the category of subassemblies, components, or parts. As a hypothetical example, a latch that is permanently attached to a watertight door may be purchased but is not carried as a spare part, subassembly, or component. Once attached, it is embedded as a permanent part of the door and not replaceable. There needs to be clarification that such hardware is not to be subject to the requirements for assignment of a UID, and the clause need not be flowed down to the supplier.

DoD Response: Concur. This paragraph of the final rule was rewritten to clarify that only subassemblies,

components, or parts embedded within an item that are serially managed, mission essential, or controlled inventory item, as determined by the requiring activity, may require UID.

53. *Comment:* In the clause at 252.211–7003(c)(3), Data syntax and semantics, the enterprise responsible for assigning the UID should determine the type of data qualifiers to use instead of this information being specified on a contract-by-contract basis.

DoD Response: Concur. The language was changed to avoid requiring a subcontractor that produces a common subassembly for use in three unique weapon systems to use a different type data qualifier depending on the end item application or service agency buying the item.

54. *Comment:* We believe that DoD should issue instructions to all of its organizations that failure to comply with the DFARS UID requirement in the first contract upon which it is imposed shall not be reason for refusing delivery or assessing withholds, provided the company has a plan in place for compliance and is proceeding in accordance with this plan. For example, we understand June 2004 is the earliest that Wide Area WorkFlow will be modified to accept DD Form 250 transactions that include required UID data, and then only for fixed-price contracts. Current contracts should not be rigidly enforced when the system for accepting the data for all contracts is not yet available to all suppliers.

DoD Response: Do not concur. Problems with compliance with the DFARS UID requirement should be addressed prior to award of the contract. After award, the contractor should be expected to comply with contract requirements.

55. *Comment:* We believe that special tooling and special test equipment and other items of Government property, created and used during the course of contracts during 2004, should be exempt from any UID marking or evaluation requirements until such items are delivered to the Government, or one of its suppliers, on or after January 1, 2005. Policy and procedure for this class of assets should be published as soon as possible.

DoD Response: Do not concur. Marking is only required when items, including special tooling and special test equipment, are delivered to the Government. Generally, it is unlikely that special tooling and special test equipment used in production under a contract requiring UID would have been delivered before January 1, 2005, due to the applicability of the rule (contracts

resulting from solicitations that were issued on or after January 1, 2004).

56. *Comment:* The DoD UID policy should be coordinated and consistent with all other aspects of DoD acquisition policy. DoD should ensure that, as this and the RFID policies evolve, care is taken to reconcile the RFID and UID policies, DFARS rule, military standards, solicitation instructions, training, and other aspects to ensure uniform interpretation and avoid missteps on the part of Government or industry.

DoD Response: Concur. RFID policies, military standards related to RFID and UID, solicitation instructions, training, and other aspects of the policies are being closely coordinated with the UID Program Office.

57. *Comment:* Individual program offices should have the flexibility to designate which parts should be marked; however, they should not dictate the process and procedure for actual marking of parts. Individual program offices should be encouraged to work with their contractors to identify what parts are to be marked, but a program office should not normally tell a contractor what marking construct to use, since the contractor's plant, and its supply chain, may already be keyed to use of a certain approach, and may incur considerable cost and disruption to alter that for a single contract.

DoD Response: The phrase "as specified elsewhere in the contract" which permitted specifying the process and procedure for actual marking of parts has not been included in the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized as follows:

This rule establishes DoD policy for marking and valuation of items delivered under DoD contracts. The objective of the rule is to improve the management of DoD assets. DoD believes that the small businesses in the manufacturing categories subject to the rule normally use some form of product identification already, *i.e.*, bar coding, as part of their commercial business practices. DoD is unaware of any small business that cannot comply with the UID policy. In fact, there is an increase in the number of small businesses providing marking/UID data services to industry and DoD. DoD anticipates that most small vendors will be able to

comply using labels and data plates readily and inexpensively available in the commercial market. A small business can order labels and data plates from a wide array of vendors at a cost of \$0.10 to \$3.00 per item. No specific investment need be made by a small business.

A copy of the analysis may be obtained from the point of contact specified herein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 202, 204, 211, 212, 243, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 202, 204, 211, 212, 243, and 252, which was published at 68 FR 75196 on December 30, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 202, 204, 211, 212, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Sections 211.274-1 through 211.274-3 are revised and section 211.274-4 is added to read as follows:

211.274-1 General.

Unique item identification and valuation is a system of marking and valuing items delivered to DoD that will enhance logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through unique item identification policy, which capitalizes on leading practices and embraces open standards, DoD can—

(a) Achieve lower life-cycle cost of item management and improve life-cycle property management;

(b) Improve operational readiness;

(c) Provide reliable accountability of property and asset visibility throughout the life cycle; and

(d) Reduce the burden on the workforce through increased productivity and efficiency.

211.274-2 Policy for unique item identification.

(a) It is DoD policy that DoD unique item identification, or a DoD recognized unique identification equivalent, is required for—

(1) All delivered items for which the Government's unit acquisition cost is \$5,000 or more;

(2) Items for which the Government's unit acquisition cost is less than \$5,000, when identified by the requiring activity as serially managed, mission essential, or controlled inventory;

(3) Items for which the Government's unit acquisition cost is less than \$5,000, when the requiring activity determines that permanent identification is required; and

(4) Regardless of value—

(i) Any DoD serially managed subassembly, component, or part embedded within a delivered item; and

(ii) The parent item (as defined in 252.211-7003(a)) that contains the embedded subassembly, component, or part.

(b) *Exceptions.* The Contractor will not be required to provide DoD unique item identification if—

(1) The items, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial item acquired under FAR Part 12 or Part 8.

(i) The determination and findings shall be executed by—

(A) The Component Acquisition Executive for an acquisition category (ACAT) I program; or

(B) The head of the contracting activity for all other programs.

(ii) The DoD Unique Item Identification Program Office must receive a copy of the determination and findings required by paragraph (b)(2)(i) of this subsection. Send the copy to DPAP, SPEC ASST, 3060 Defense Pentagon, 3E1044, Washington, DC 20301-3060; or by facsimile to (703) 695-7596.

211.274-3 Policy for valuation.

(a) It is DoD policy that contractors shall be required to identify the Government's unit acquisition cost (as defined in 252.211-7003(a)) for all items delivered, even if none of the criteria for placing a unique item identification mark applies.

(b) The Government's unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items delivered under a time-and-materials contract, the contractor's estimated fully burdened unit cost to the Government at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items need not be separately identified.

211.274-4 Contract clause.

Use the clause at 252.211-7003, Item Identification and Valuation, in solicitations and contracts that require item identification or valuation, or both, in accordance with 211.274-2 and 211.274-3.

(a) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below \$5,000 in unit acquisition cost for which DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2(a)(2) or (3).

(b) Complete paragraph (c)(1)(iii) of the clause with the applicable attachment number, when DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2(a)(4) for DoD serially managed subassemblies, components, or parts embedded within deliverable items.

(c) Use the clause with its Alternate I if—

(1) An exception in 211.274-2(b) applies; or

(2) Items are to be delivered to the Government and none of the criteria for placing a unique item identification mark applies.

PART 212—ACQUISITION OF COMMERCIAL ITEMS 212.301 [AMENDED]

■ 3. Section 212.301 is amended in paragraph (f)(vi) by removing “211.274-3” and adding in its place “211.274-4”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.211-7003 is revised to read as follows:

252.211-7003 Item Identification and Valuation.

As prescribed in 211.274-4, use the following clause:

Item Identification and Valuation (Apr 2005)

(a) *Definitions.* As used in this clause'

Automatic identification device means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

Data qualifier means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at <http://www.acq.osd.mil/dpap/UID/equivalents.html>.

DoD unique item identification means a system of marking items delivered to DoD with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items. For items that are serialized within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier and a unique serial number. For items that are serialized within the part, lot, or batch number within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier; the original part, lot, or batch number; and the serial number.

Enterprise means the entity (e.g., a manufacturer or vendor) responsible for assigning unique item identifiers to items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

Government's unit acquisition cost means—

(1) For fixed-price type line, subtitle, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subtitle, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery.

Issuing agency means an organization responsible for assigning a non-repeatable

identifier to an enterprise (i.e., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

Issuing agency code means a code that designates the registration (or controlling) authority for the enterprise identifier.

Item means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

Lot or batch number means an identifying number assigned by the enterprise to a designated group of items, usually referred to as either a lot or a batch, all of which were manufactured under identical conditions.

Machine-readable means an automatic identification technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

Original part number means a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface.

Parent item means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

Serial number within the enterprise identifier means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

Serial number within the part, lot, or batch number means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part, lot, or batch number assignment.

Serialization within the enterprise identifier means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

Serialization within the part, lot, or batch number means each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment. The enterprise is responsible for ensuring unique serialization within the part, lot, or batch number within the enterprise identifier.

Unique item identifier means a set of data elements marked on items that is globally unique and unambiguous.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at http://www.acq.osd.mil/dpap/UID/uid_types.html.

(b) The Contractor shall deliver all items under a contract line, subtitle, or exhibit line item.

(c) *DoD unique item identification or DoD recognized unique identification equivalents.*

(1) The Contractor shall provide DoD unique item identification, or a DoD recognized unique identification equivalent, for—

(i) All delivered items for which the Government's unit acquisition cost is \$5,000 or more; and

(ii) The following items for which the Government's unit acquisition cost is less than \$5,000:

| Contract line, subtitle, or exhibit line item No. | Item description: |
|---|-------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number _____.

(2) The concatenated unique item identifier and the component data elements of the DoD unique item identification or DoD recognized unique identification equivalent shall not change over the life of the item.

(3) *Data syntax and semantics of DoD unique item identification and DoD recognized unique identification equivalents.* The Contractor shall ensure that—

(i) The encoded data elements (except issuing agency code) of the unique item identifier are marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Data Identifiers (DIs) (Format 06) in accordance with ISO/IEC International Standard 15418, Information Technology "EAN/UCC Application Identifiers and ANSI MH 10 Data Identifiers and ANSI MH 10 Data Identifiers and Maintenance.

(B) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology "EAN/UCC Application Identifiers and ANSI MH 10 Data Identifiers and ANSI MH 10 Data Identifiers and Maintenance.

(C) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution "DD" format for use until the solution is approved by ISO/IEC JTC1 SC 31. The "DD" format is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at <http://www.acq.osd.mil/dpap/UID/guides.html>; and

(ii) The encoded data elements of the unique item identifier conform to ISO/IEC International Standard 15434, Information Technology—Syntax for High Capacity Automatic Data Capture Media.

(4) *DoD unique item identification and DoD recognized unique identification equivalents.*

(i) The Contractor shall—

(A) Determine whether to serialize within the enterprise identifier or serialize within the part, lot, or batch number; and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; and for serialization within the part, lot, or batch number only; original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in the version of MIL-

STD-130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires unique item identification under paragraph (c) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, either as part of, or associated with, the Material Inspection and Receiving Report, the following information:

(1) Concatenated unique item identifier; or DoD recognized unique identification equivalent.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number.

(6) Lot or batch number.

(7) Current part number (if not the same as the original part number).

(8) Current part number effective date.

(9) Serial number.

(10) Government's unit acquisition cost.

(e) *Embedded DoD serially managed subassemblies, components, and parts.* The Contractor shall report at the time of delivery, either as part of, or associated with the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Concatenated unique item identifier or DoD recognized unique identification equivalent of the parent item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Concatenated unique item identifier or DoD recognized unique identification equivalent of the embedded subassembly, component, or part.

(3) Unique item identifier type.**

(4) Issuing agency code (if concatenated unique item identifier is used).**

(5) Enterprise identifier (if concatenated unique item identifier is used).**

(6) Original part number.**

(7) Lot or batch number.**

(8) Current part number (if not the same as the original part number).**

(9) Current part number effective date.**

(10) Serial number.**

(11) Unit of measure.

(12) Description.

** Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause in accordance with the data submission procedures at <http://www.acq.osd.mil/dpap/UID/DataSubmission.htm>.

(g) *Subcontracts.* If paragraph (c)(1) of this clause applies, the Contractor shall include this clause, including this paragraph (g), in all subcontracts issued under this contract. (End of clause)

Alternate I (APR 2005)

As prescribed in 211.274-4(c) delete paragraphs (c), (d), (e), (f), and (g) of the basic

clause, and add the following paragraphs (c) and (d) to the basic clause.

(c) For each item delivered under a contract line, subline, or exhibit line item under paragraph (b) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report the Government's unit acquisition cost.

(d) The Contractor shall submit the information required by paragraph (c) of this clause in accordance with the data submission procedures at <http://www.acq.osd.mil/dpap/UID/DataSubmission.htm>.

[FR Doc. 05-7981 Filed 4-21-05; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004-D001]

Defense Federal Acquisition Regulation Supplement; Reporting Contract Performance Outside the United States

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for reporting of contract performance outside the United States. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Effective Date: April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2004-D001.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative

impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

DFARS Subpart 225.72, Reporting Contract Performance Outside the United States, implements: (1) DoD policy for contractor reporting of performance outside the United States under contracts exceeding \$500,000; and (2) requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada, when the contract exceeds \$10 million and could be performed inside the United States or Canada.

This final rule revises DFARS Subpart 225.72, and the corresponding solicitation provision and contract clause, to clarify the two separate reporting requirements. In addition, the rule removes DFARS text (previously at 225.7202) related to contracting officer distribution of reports. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 69 FR 31939 on June 8, 2004. DoD received comments from one industry association. The comments are summarized as follows:

1. *Comment:* The quarterly reporting requirement, which is not based on a statutory requirement, should be eliminated.

DoD Response: Do not concur. The quarterly report provides information that DoD uses in the assessment of bilateral defense trade with allied countries. The information is also of significant interest to Congress.

2. *Comment:* The reporting requirements should apply only to subcontracts that are awarded directly as a result of the award of the prime contract.

DoD Response: Do not concur. The purpose of the reporting requirements is to determine the portion of total contract dollars spent on performance outside the United States, regardless of whether the dollars are spent as a result of a preexisting contractual arrangement or as a result of a subcontract awarded directly under the prime contract.

3. *Comment:* The clause titles and text should be revised to clarify the nature and timing of the reporting requirements.

DoD Response: The final rule incorporates most of the recommended clarifying changes. In particular, the final rule—