

Enforcement Fairness Act of 1996, (SBREFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 605(6). In addition, the term "small business" has the same meaning as "small business concern" under the Small Business Act. [See 5 U.S.C. 605(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after the opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field or operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996).

The Report and Order repeals a regulatory policy that prevented companies from obtaining licenses to operate earth stations in rural Alaska that would carry telephone calls between users in certain Alaskan communities and users in other states if such service was already available in those communities via facilities provided by an established carrier. Because the Report and Order does not impose any regulatory burden, we certify that it will not have a significant economic impact on a substantial number of small businesses. The Commission will send a copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

The Alaska Bush Earth Station Policy, formally adopted by the Commission in *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in*

Alaska, Final Decision, 49 FR 9727 (March 15, 1984) is discontinued.

The Commission's Consumer and Government Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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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: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy pertaining to item identification and valuation. The rule requires contractors to uniquely identify, through the use of item identification marking, all items to be delivered to the Government. The rule also adds requirements for contracts to provide for identification of the Government's acquisition cost of items that are built or acquired by a contractor during contract performance and subsequently delivered to the Government.

DATES: *Effective date:* January 1, 2004.

Applicability date: The requirements in this rule apply to all solicitations issued on or after January 1, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 10, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2003-D081 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D081.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602-0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule establishes requirements for contractors to furnish unique item identifiers, or other item identification, and to provide the Government's acquisition cost of items that are to be delivered under a DoD contract.

The rule requires contracting officers to include appropriate administrative requirements in contracts so that the Government's acquisition cost of the delivered items can be captured in DoD's property accountability, inventory, and financial management information systems.

The rule requires that all items delivered to the Government be delivered under a contract line item and that the Government's acquisition cost of each item be identified under a contract line item or subline item or an informational subline item.

The rule assumes that MIL-STD-130, Identification Marking of U.S. Military Property, will be revised to be compatible with this unique identification requirement no later than the implementation date of January 1, 2004.

DoD will make changes to its processes and information systems, in accordance with the requirements of this rule, necessary to comply with the financial reporting requirements imposed by the Federal Accounting Standards Advisory Board.

DoD is particularly interested in receiving comments on the following topics:

1. The use and definition of the term "item" or some more appropriate term throughout the rule.

2. The valuation portion of the rule, particularly as it applies to cost-type contracts and the treatment of non-recurring costs.

3. The statement that the rule does not impose any new information collection requirements.

4. The impact of the rule on small business.

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

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

This interim rule adds requirements for contractors to provide unique identification for all items delivered to DoD, through the use of item identification marking. In addition, the rule adds requirements for DoD contracts to provide for identification of the Government's acquisition cost of all items built or acquired by the contractor and subsequently delivered to DoD under the contract. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101-576) and the financial reporting requirements imposed by the Federal Accounting Standards Advisory Board. The objective of the rule is to improve management of DoD assets. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives that will enable DoD compliance with the Chief Financial Officers Act of 1990 and the Federal Accounting Standards Advisory Board reporting requirements.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist

to publish an interim rule prior to affording the public an opportunity to comment. DoD considers the implementation of unique identification—also known as UID, to be a strategic imperative, necessary to efficiently move supplies to warfighters. This interim rule adds requirements for contractors to uniquely mark items and to provide for identification of the Government's acquisition cost of items that are to be delivered to DoD. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops. Through the new policy, DoD can consistently capture the value of items it buys, control these items during their use and combat counterfeiting of parts. It will further enable DoD to make appropriate entries into its property accountability, inventory, and financial management information systems toward achieving compliance with the Chief Financial Officers Act. DoD issued UID policy by memorandum dated July 29, 2003, requiring implementation by January 1, 2004. Immediate publication of this rule is essential to allow effective implementation of the policy by January 1, 2004. Comments received in response to this interim rule will be considered in the formation of the final rule.

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

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 202, 204, 211, 212, 243, and 252 are amended as follows:

■ 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 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Section 202.101 is amended by adding, in alphabetical order, a

definition of “Unique item identifier” to read as follows:

202.101 Definitions.

* * * * *

Unique item identifier means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

PART 204—ADMINISTRATIVE MATTERS

■ 3. Section 204.7104-1 is amended by revising paragraph (a)(3) to read as follows:

204.7104-1 Criteria for establishing.

* * * * *

(a) * * *

(3) Informational subline items shall be used to identify—

(i) Each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103-1(a)(4)(ii)); and

(ii) The Government's acquisition cost of an item delivered under a contract when—

(A) The item requires a unique item identifier; and

(B) A separately priced contract line item or subline item is not practical.

* * * * *

■ 4. Section 204.7104-2 is amended by adding paragraphs (e)(10) and (11) to read as follows:

204.7104-2 Numbering procedures.

* * * * *

(e) * * *

(10) Subline items structured to capture the acquisition cost of spares that will require unique item identifiers (delivery schedule and fixed price are established for the lot of spares at the contract line item level).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0031	Spares for Torpedo MK 45 Mod 1	50	LOT	\$56,860.57	\$2,843,028.50
003101	Integrator Assy LD; Acq Cost: \$16,742.25	50	EA	NSP	
003102	Pulse Generator Assy LD; Acq Cost: \$8,357.56.	50	EA	NSP	
003103	Drive Shaft Assy LD; Acq Cost: \$6,365.12	50	EA	NSP	
*	*	*	*	*	*
003116	Actual Panel Assy LD; Acq Cost: \$5,730.56	50	EA	NSP	
003117	Pulse Decoder; Acq Cost: <\$5,000	50	EA	NSP	

(11) Subline items structured to capture the acquisition cost of spares that will require unique item identifiers under a cost-type contract.

Item No.	Supplies/service	Quantity	Unit	Estimated cost*	Total estimated cost*
0031	Spares for Torpedo MK 45 Mod 1	50			\$2,843,028.50
003101	Integrator Assy LD	50 EA			
003102	Pulse Generator Assy LD	50 EA			
003103	Drive Shaft Assy LD	50 EA			
*	*	*	*	*	*
003116	Actual Panel Assy LD	50 EA		\$5,730.56	
003117	Pulse Decoder	50 EA		\$357.00	

* Acquisition cost for each item shall be reported in accordance with 252.211-7003, Item Identification and Valuation.

PART 211—DESCRIBING AGENCY NEEDS

■ 5. Sections 211.274 through 211.274-3 are added to read as follows:

211.274 Item identification and valuation.

211.274-1 Item identification.

(a) Contracts shall require that all items delivered to the Government—
 (1) Be delivered under a contract line item; and
 (2) Contain unique item identification, or a DoD recognized unique identification equivalent (if one is not already marked), if—
 (i) The Government's acquisition cost of the item is \$5,000 or more; or
 (ii) The requiring activity determines that unique identification is necessary for the item (e.g., serially managed, mission essential, or controlled inventory piece of equipment or a repairable item, a consumable item or material where permanent identification is required, or a component of a delivered item).
 (b) The contract shall include a requirement for commonly accepted commercial marks if it is determined that unique item identification or a DoD recognized unique identification equivalent is not required, and unique item identification is not already marked.

211.274-2 Government's acquisition cost of items.

(a) Contracts shall identify the Government's acquisition cost for all items delivered. The preferred approach for identifying the Government's acquisition cost of items is separate pricing under a contract line item or subline item.
 (b) When separately priced contract line items or subline items are clearly not practicable, establish separate informational subline items (see 204.7104-1(a)) for identifying the Government's acquisition cost.
 (1) Informational subline items used only for identification of the

Government's acquisition cost shall be clearly identified as such and shall not be used as a basis for payment.

(2) When the Government's acquisition costs for like items differ, use a separate informational subline item to identify the acquisition cost for those items.

(c) The Government's acquisition cost for items delivered under—

(1) Fixed-price contracts is the unit price identified at contract award, updated by any contract modifications.
 (2) Cost-type contracts is the contractor's fully burdened actual cost for each item, plus a proportionate amount of the fee at the time the item is delivered to the Government.
 (i) Items valued at \$5,000 or more shall be identified in a separate contract line item or subline item.
 (ii) Items valued below \$5,000 may be combined under a contract line item or subline item; however, the contractor must report the Government's acquisition cost of each item.
 (d) Modify the contract to establish separate contract line items or subline items prior to delivery of items that were not identified as contract deliverables at the time of contract award.
 (e) The Government's acquisition cost of components delivered within end items need not be identified.

211.274-3 Contract clause.

Use the clause at 252.211-7003, Item Identification and Valuation, in solicitations and contracts that require delivery of one or more "items" as defined at 252.211-7003(a). Complete paragraph (b) of the clause with the contract line item number or subline item number and description of the item(s) requiring unique identification.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 6. Section 212.301 is amended by adding paragraph (f)(vii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *
 (f) * * * * *
 (vii) Use the clause at 252.211-7003, Item Identification, as prescribed at 211.274-3.

PART 243—CONTRACT MODIFICATIONS

■ 7. Section 243.171 is amended as follows:

■ a. By redesignating the introductory text and paragraphs (a), (b), and (c), as paragraphs (a) and (a)(1), (2), and (3), respectively; and
 ■ b. By adding a new paragraph (b) to read as follows:

243.171 Obligation or deobligation of funds.

* * * * *
 (b) When changes in the value of the contract result in changes to the Government's acquisition cost of delivered items, the contracting officer shall allocate those changes to the acquisition cost of those items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.211-7003 is added to read as follows:

252.211-7003 Item Identification and Valuation.

As prescribed in 211.274-3, use the following clause:
 Item Identification and Valuation (Jan 2004)
 (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.
Commonly accepted commercial marks means any system of marking products for identification that is in use generally throughout commercial industry or within commercial industry sectors. Some examples of commonly accepted commercial marks are: EAN.UCC Global Trade Item Number;

Automotive Industry Action Group B-4 Parts Identification and Tracking Application Standard, and B-2 Vehicle Identification Number Bar Code Label Standard; American Trucking Association Vehicle Maintenance Reporting Standards; Electronic Industries Alliance EIA 802 Product Marking Standard; and Telecommunications Manufacturers Common Language Equipment Identification Code.

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 that can be used to uniquely identify DoD items that are purchased from commercial industries that use the unique identification equivalents. Some examples are: EAN, UCC Global Individual Asset Identifier, health care capital assets labeled with the Health Industry Bar Code Standard, and the Automotive Industry Action Group B-2 Vehicle Identification Number Bar Code Label Standard.

Enterprise means the entity (*i.e.*, 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 a registration (or controlling) authority.

Government's acquisition cost means—

(1) For fixed-price contracts, the unit price identified at contract award, updated by any contract modifications; and

(2) For cost-type contracts, the Contractor's fully burdened actual cost that has been accumulated, plus a proportionate amount of fee for each item at the time the item is delivered.

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

Item means a single article or unit formed by a grouping of component or constituent parts required to be delivered in accordance with the terms and conditions of this contract. Under this contract, an item is any article produced, stocked, stored, issued, or used; or any product, including systems, materiel, parts, subassemblies, sets, or accessories.

Machine-readable means an automatic information 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 asset creation to a class of items with the same form, fit, function, and interface.

Registration (or controlling) authority 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) Number).

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

Unique item identification means marking an item with machine-readable data elements to distinguish it from all other like and unlike items.

Unique item identifier means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

(b) *Unique item identification.*

(1) The Contractor shall provide unique item identification marking, or a DoD recognized unique identification equivalent (if one is not already marked), for—

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

(ii) The following items to be delivered under this contract:

Contract Line Item	Description

(2) The unique item identifier and the component data elements of the unique item identifier shall not change over the life of the item.

(3) *Data elements.*

(i) For items that are serialized within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, and a unique serial number.

(ii) For items that are serialized within the part number within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, the original part number, and the serial number.

(iii) The issuing agency code shall be derived from the data qualifier for the enterprise identifier.

(iv) The issuing agency code shall not be placed on the item.

(4) *Data syntax and semantics.* 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:

(A) Data Identifiers (DIs) (Format 06).

(B) Application Identifiers (AIs) (Format 05), 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.

(C) 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.

(Note: The DoD collaborative solution is described in Appendix D of the DoD guide to Uniquely Identifying Tangible Items, available at <http://www.acq.osd.mil/uid>.)

(ii) Use high capacity automatic identification devices in unique identification that conform to ISO/IEC International Standard 15434, Information Technology—Syntax for High Capacity Automatic Data Capture Media.

(5) *Marking items.* Unless otherwise specified in the contract, data elements for unique identification (enterprise identifier, serial number, and, for serialization within the part number only, original part number) shall be placed on items requiring marking by paragraph (b)(1) of this clause in accordance with the standard practice of MIL-STD-130K, Identification Marking of U.S. Military Property.

(c) *Commonly accepted commercial marks.* The Contractor shall provide commonly accepted commercial marking for items delivered under this contract that are not required to have unique item identification or a DoD-recognized unique identification equivalent under paragraph (b) of this clause.

(d) *Item records.* Records of all items delivered to the Government shall include, at a minimum, the following information:

(1) Description.

(2) Unique item identifier concatenated or other approved item identifier.

(3) Quantity shipped.

(4) Unit of measure.

(5) Acquisition cost.

(6) Ship-to code.

(7) Shipment date.

(8) Enterprise identifier.

(9) Serial number.

(10) Original part number.

(e) *Valuation.* The Contractor shall report the Government's acquisition cost of items delivered under this contract as follows:

(1) Except as specified in paragraph (e)(3)(ii) of this clause, the Contractor shall report the Government's acquisition cost of items under separately priced contract line item numbers, subline item numbers, or informational subline item numbers.

(2) When informational subline items are used only for identification of the Government's acquisition cost, they will be clearly identified as such and shall not be used as a basis for payment.

(3) The Contractor shall normally report the Government's acquisition cost for items under cost-type contracts to the Contracting Officer at the time of delivery, but in no event later than the close of the Contractor's fiscal period during which the delivery was made.

(i) When a unique item identifier is required, the Contractor shall report the actual cost that has been accumulated for each item identified in paragraph (b) of this clause and set forth in a contract line item or subline item.

(ii) When a commonly accepted commercial mark is required, the Contractor

shall report the actual cost that has been accumulated for each item, whether or not listed in paragraph (b) of this clause. In many cases, such items will have been combined under a single contract line item or subline item.

(f) *Subcontracts*. The Contractor shall include the requirements of this clause in all

subcontracts that will result in delivery of items under this contract.

(End of clause)

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