

(DFARS) to update references and the list of Army contracting activities.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0311; facsimile 703-602-7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- 201.201-1. Updates the reference to the DoD publication addressing the operation of the Defense Acquisition Regulations Council.
- 202.101. Updates the list of Army contracting activities.
- 213.301. Updates the Web link to the DoD Government charge card guidebook.
- 215.404-71-4. Updates cross-references.

List of Subjects in 48 CFR Parts 201, 202, 213, and 215

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 201, 202, 213, and 215 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 201, 202, 213, and 215 continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.201-1 [Amended]

■ 2. Section 201.201-1 is amended in paragraph (c) by removing “DoDI 5000.63” and adding in its place “DoD Instruction 5000.35”.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 3. Section 202.101 is amended in the definition of “Contracting activity” by revising the list with the heading “ARMY” to read as follows:

202.101 Definitions.

* * * * *

Army

Headquarters, U.S. Army Contracting Command
Joint Contracting Command—Iraq/
Afghanistan
National Guard Bureau
Program Executive Office for
Simulation, Training, and
Instrumentation

U.S. Army Aviation and Missile Life Cycle Management Command
U.S. Army Communications-Electronics Life Cycle Management Command
U.S. Army Corps of Engineers
U.S. Army Expeditionary Contracting Command
U.S. Army Intelligence and Security Command
U.S. Army Joint Munitions and Lethality Life Cycle Management Command
U.S. Army Medical Command
U.S. Army Medical Research and Materiel Command
U.S. Army Mission and Installation Contracting Command
U.S. Army Research, Development, and Engineering Command
U.S. Army Space and Missile Defense Command
U.S. Army Sustainment Command
U.S. Army Tank-Automotive and Armaments Life Cycle Management Command

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PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.301 [Amended]

■ 4. Section 213.301 is amended in paragraph (4), in the first sentence, by removing <http://www.acq.osd.mil/dpap/pcard/pcardguidebook.htm> and adding in its place http://www.acq.osd.mil/dpap/pdi/pc/docs/dod_charge_card_guide_20080819.doc.

PART 215—CONTRACTING BY NEGOTIATION

215.404-71-4 [Amended]

■ 5. Section 215.404-71-4 is amended in paragraph (e)(1) as follows:

■ a. By removing “paragraph (c)” and adding in its place “paragraph (f)”;

■ b. By removing “paragraph (d)” and adding in its place “paragraph (g)”.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 245, and 252

RIN 0750-AF24

Defense Federal Acquisition Regulation Supplement; Reports of Government Property (DFARS Case 2005-D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for reporting of Government property in the possession of DoD contractors. The rule replaces DD Form 1662 reporting requirements with requirements for DoD contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data applicable to the Government property in the contractor’s possession.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2005-D015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 52293 on September 13, 2007, to require reporting of DoD property in the possession of contractors through use of the DoD IUID Registry. Three sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. Marking Requirements

a. *Comment:* Concerning the clause at DFARS 252.211-7007 and the requirement to create a unique item identifier (UII) for certain Government property, physically mark it, and load the required data into the IUID Registry when an item is shipped: There needs to be a notification mechanism on shipping paperwork to identify an item in a given shipment that is IUID compliant. Without some type of information on the documentation indicating that a UII is present, the physical mark could be overlooked and the receiver might create a new UII using its data elements and load the item into the Registry, causing multiple entries for a single item. Under the interim rule, the physical mark is the only indicator to a receiver that a UII is present and must be read to obtain the number for look-up in the Registry. This would seem to be inadequate.

DoD Response: To avoid any confusion, the marking requirement has been excluded from the final rule. Therefore, the recommended notification mechanism is unnecessary.

b. *Comment:* The interim rule imposes a requirement on contractors to

arbitrarily mark items furnished by the Government but received by the contractor without a physical marking. Prior to marking an item with a UII, a contractor would need to perform an appropriate analysis to determine the method, content, and location of the mark. In many cases, the contractor that receives Government-furnished items is not the manufacturer of the items and does not have design authority or sufficient technical knowledge to conduct an analysis and determine the appropriate marking. Moreover, many of the items in the aerospace and defense industry are flight safety critical items for which contractors cannot accept the responsibility/liability of altering the items. Specific requirements for marking of "unmarked" items should be addressed on a contract-by-contract basis so that the contractor does not void any warranties or adversely affect the form, fit, or function of the item.

DoD Response: The clause at DFARS 252.211-7007 has been amended to address only reporting requirements. The final rule contains no marking requirements.

c. *Comment:* Paragraph (d)(5) of the clause at DFARS 252.211-7007 requires re-marking of previously tagged or bagged embedded items that are subsequently removed from use. This paragraph should be deleted. Once identified, an item is always identified. This information should be provided as a bill of material for all UII items, including embedded UIIs as part of the contract.

DoD Response: Marking requirements have been excluded from the final rule.

2. Items Subject to Reporting Requirements

a. *Comment:* The DFARS rule should clearly exclude reparables, since reparables do not meet the definition of property in the possession of contractors as defined in the Item Unique Identification Property Guidebook; i.e., reparables are not provided to the contractor for performance of a contract but rather for repair. This should be addressed at DFARS 211.274-4(b). In addition, Government-furnished material that is not part of the end item deliverable in a bill of materials should not be subject to reporting under the rule. This should also be addressed at DFARS 211.274-4(b). Express recognition of these exclusions will provide clarification and will enable the Government to obtain the full cost of a deliverable end item that is in keeping with the intent, in part, of the Chief Financial Officer's Act of 1990 (Pub. L. 101-576).

DoD Response: The final rule excludes reparables and Government-furnished material from IUID reporting requirements, in addition to the following: Items with an acquisition value of less than \$5,000 that are not serially managed, mission essential, sensitive, or controlled inventory, unless the terms and conditions of the contract state otherwise; contractor-acquired property; property under any statutory leasing authority; property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; intellectual property or software; and real property.

b. *Comment:* At DFARS 252.211-7007(b)(4), add the words "for use" so that the paragraph reads: "The Contractor shall assign and register a UII and the master item data for any subassembly, component, or part that does not have an existing UII when it is removed for use from a parent item and remains with the Contractor as a stand-alone item." This will eliminate any requirement to identify items that are removed for disposition.

DoD Response: The referenced paragraph (b)(4) has been excluded from the final rule. The rule has been revised to clarify the types of property that require reporting to the DoD IUID Registry, i.e., equipment, special tooling, special test equipment.

3. Reporting Mechanism

Comment: Although the rules for UII creation and marking are similar for new procurement items and legacy items, the mechanism for loading UII data to the IUID Registry for legacy items (e.g., repairable items not yet registered) differs from the mechanism for loading new procurement items, which is accomplished through Wide Area WorkFlow (WAWF). Specifically, the Material Inspection and Receiving Report required for acceptance of service items (e.g., contract line items for the repair of Government items) is not to be used to submit IUID data for supply items. That is, a contractor may not report via WAWF a new UII for a Government-owned item that the contractor has repaired. Please provide clarification to reflect this difference and provide guidance for the registration of IUID data for legacy items, specifically addressing repaired items.

DoD Response: The rule has been revised to clarify the mechanism for reporting items to the DoD IUID Registry. Specifically, that reporting is via direct input to the DoD IUID Registry, not via WAWF. WAWF was built as the input mechanism for the

acquisition of new items (not Government-furnished equipment). Additionally, the final rule excludes reparables from IUID reporting requirements.

4. Data Submission Requirements

a. *Comment:* At 252.211-7007(b)(7), add the phrase "the version of _____, cited in the Contract Schedule" to the end of the first sentence, so that the sentence reads: "The Contractor shall submit the UII and the master item data into the IUID Registry in accordance with the data submission procedures in the Item Unique Identification of Government Property Guidebook at: <http://www.acq.osd.mil/dpap/pdi/UID/guides.html> the version of _____, cited in the Contract Schedule." This would be similar to the language used to invoke the applicable version of MIL-STD-130 at DFARS 252.211-7003. Also suggest adding Section IV of the document entitled DD 1662 Transition Instruction (August 23, 2005). This will clarify data to be provided when information is entered into the Registry.

DoD Response: The rule has been revised to more clearly specify data submission requirements, and the reference to the Government Property Guidebook has been excluded from the final rule. Accordingly, there is no need to add Section IV of the document entitled DD 1662 Transition Instruction (August 23, 2005).

b. *Comment:* The first sentence in paragraph (c)(1) of the clause at DFARS 252.211-7007 should be revised to state that updates to the IUID Registry should be accomplished "in accordance with the recognized data submission methods on the IUID Web site."

DoD Response: The contract clause in the final rule clearly specifies reporting requirements and also provides a reference to the DoD IUID Registry Web site.

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. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to require DoD contractors to electronically submit, to the DoD IUID Registry, the IUID data applicable to the Government property in the contractor's possession. The previous, paper-based DD Form 1662 reporting system did not provide DoD with sufficient information to

validate the existence, completeness, or valuation of Government property in the possession of contractors. The objective of the rule is to improve the accountability and control of DoD assets. DoD considers use of the IUID Registry to be the most practical and beneficial reporting method for both Government and industry. Continued reliance on the prior paper-based reporting method would not permit the level of accountability that DoD needs to comply with statutory and regulatory requirements related to the management of Government property. DoD already has adopted the use of IUID technology as the standard marking approach for all items in DoD's inventory system. Therefore, it logically follows that DoD property in the possession of contractors should also be recorded and reported using IUID technology.

C. Paperwork Reduction Act

The information collection requirements associated with contractor reporting of Government property have been approved by the Office of Management and Budget, under Clearance Number 0704-0246, for use through April 30, 2009. The requirements of this rule are not expected to significantly change the burden hours approved under Clearance Number 0704-0246.

List of Subjects in 48 CFR Parts 211, 245, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 211, 245, and 252, which was published at 72 FR 52293 on September 13, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR Parts 211, 245, and 252 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Section 211.274-4 is revised to read as follows:

211.274-4 Policy for reporting of Government-furnished equipment in the DoD Item Unique Identification (IUID) Registry.

It is DoD policy that Government-furnished equipment be recorded in the DoD IUID Registry, except for—

(a) Items with an acquisition cost of less than \$5,000 that are not identified

as serially managed, mission essential, sensitive, or controlled inventory, unless the terms and conditions of the contract state otherwise;

(b) Government-furnished material;

(c) Repairables;

(d) Contractor-acquired property as defined in FAR Part 45;

(e) Property under any statutory leasing authority;

(f) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(g) Intellectual property or software; and

(h) Real property.

■ 3. Section 211.274-5 is amended by revising paragraph (b)(1) introductory text to read as follows:

211.274-5 Contract clauses.

* * * * *

(b)(1) Use the clause at 252.211-7007, Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry, in solicitations and contracts that contain the clause at—

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.211-7007 is revised to read as follows:

252.211-7007 Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry.

As prescribed in 211.274-5(b), use the following clause:

REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION (IUID) REGISTRY (NOV 2008)

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

2D data matrix symbol means the 2-dimensional Data Matrix ECC 200 as specified by International Standards Organization/International Electrotechnical Commission (ISO/IEC) Standard 16022: Information Technology—International Symbology Specification—Data Matrix.

Acquisition cost, for Government-furnished equipment, means the amount identified in the contract, or in the absence of such identification, the item's fair market value.

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; e.g., the enterprise identifier along with the contractor's property internal identification, i.e., tag number is recognized as the serial number; 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.

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished equipment means an item of special tooling, special test equipment, or equipment, in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor (including subcontractors and alternate locations) for the performance of a contract.

Item means equipment, special tooling, or special test equipment, to include such equipment, special tooling, or special test equipment that is designated as serially managed, mission essential, sensitive, or controlled inventory (if previously identified as such in accordance with the terms and conditions of the contract).

Item unique identification (IUID) means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

IUID Registry means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, or special test equipment.

Reparable means an item, typically in unserviceable condition, furnished to the Contractor for maintenance, repair, modification, or overhaul.

Sensitive item means an item potentially dangerous to public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Serially managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test

equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, or equipment items used for general testing purposes, or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items, including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

Virtual UII means the UII data elements assigned to an item that is not marked with a DoD compliant 2D data matrix symbol, e.g., enterprise identifier, part number, and serial number; or the enterprise identifier along with the Contractor's property internal identification, i.e., tag number.

(b) *Requirement for item unique identification of Government-furnished equipment.* Except as provided in paragraph (c) of this clause—

(1) Contractor accountability and management of Government-furnished equipment shall be performed at the item level; and

(2) Unless provided by the Government, the Contractor shall establish a virtual UII or a DoD recognized unique identification for items that are—

(i) Valued at \$5,000 or more in unit acquisition cost; or

(ii) Valued at less than \$5,000 in unit acquisition cost and are serially managed, mission essential, sensitive, or controlled inventory, as identified in accordance with the terms and conditions of the contract.

(c) *Exceptions.* Paragraph (b) of this clause does not apply to—

(1) Government-furnished material;

(2) Repairables;

(3) Contractor-acquired property;

(4) Property under any statutory leasing authority;

(5) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(6) Intellectual property or software; or

(7) Real property.

(d) *Procedures for establishing UIIs.* To permit reporting of virtual UIIs to the DoD UIID Registry, the Contractor's property management system shall enable the following data elements in addition to those

required by paragraph (f)(1)(iii) of the Government Property clause of this contract (FAR 52.245-1):

(1) Parent UII.

(2) Concatenated UII.

(3) Received/Sent (shipped) date.

(4) Status code.

(5) Current part number (if different from the original part number).

(6) Current part number effective date.

(7) Category code ("E" for equipment).

(8) Contract number.

(9) Commercial and Government Entity (CAGE) code.

(10) Mark record.

(i) Bagged or tagged code (for items too small to individually tag or mark).

(ii) Contents (the type of information recorded on the item, e.g., item internal control number).

(iii) Effective date (date the mark is applied).

(iv) Added or removed code/flag.

(v) Marker code (designates which code is used in the marker identifier, e.g., D=CAGE, UN=DUNS, LD=DODAAC).

(vi) Marker identifier, e.g., Contractor's CAGE code or DUNS number).

(vii) Medium code; how the data is recorded, e.g., barcode, contact memory button.

(viii) Value, e.g., actual text or data string that is recorded in its human readable form.

(ix) Set (used to group marks when multiple sets exist); for the purpose of this clause, this defaults to "one (1)".

(e) *Procedures for updating the DoD UIID Registry.* The Contractor shall update the DoD UIID Registry at <https://www.bpn.gov/uiid> for changes in status, mark, custody, or disposition of items—

(1) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(2) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(3) Disposed of; or

(4) Transferred to a follow-on or other contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 247, and 252

RIN 0750-AF75

Defense Federal Acquisition Regulation Supplement; Carriage Vessel Overhaul, Repair, and Maintenance (DFARS Case 2007-D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007. Section 1017 requires DoD to establish an evaluation criterion, for use in obtaining carriage of cargo by vessel, that considers the extent to which an offeror has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0302; facsimile 703-602-7887. Please cite DFARS Case 2007-D001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 49204 on August 28, 2007, to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 1017 requires DoD to issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage of cargo by vessel for DoD, the extent to which an offeror of such carriage has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

Nine sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Some respondents took exception to the rule's use of the term "evaluation factor or subfactor" with regard to consideration of the amount of work an offeror has performed in U.S. shipyards. The respondents suggested