

Item No.	Supplies/Service	Quantity	Unit	Unit Price	Amount
0001	Computer, Desktop with CPU, Keyboard and Mouse	20	EA		
0002	Monitor	20	EA		

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

RIN 0750-AG39

Defense Federal Acquisition Regulation Supplement; Annual Representations and Certifications (DFARS Case 2009-D011)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform it to higher-level changes in the Code of Federal Regulation relating to annual representations and certifications.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703-602-0310.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS 204.1202 prescribes use of DFARS provision 252.204-7007, Alternate A, Annual Representations and Certifications, in contracts that also incorporate Federal Acquisition Regulation (FAR) provision 52.204-8, Annual Representations and Certifications. FAR 52.204-8 was changed to add a new paragraph (c), which lists the applicable representations and certifications in the Online Representations and Certifications Application (ORCA). This FAR change necessitated a similar modification of DFARS 252.204-7007.

DoD published a proposed rule in the **Federal Register** at 75 FR 71646, on November 24, 2010, to update DFARS 204.1202 and 252.204-7007. The public comment period closed January 24, 2011. Two respondents submitted comments on the proposed rule. A discussion of the comments is provided below.

II. Discussion and Analysis

A. Applicability

Comment: A respondent recommended DFARS 252.212-7000, Offeror Representations and Certifications—Commercial Items, be retained in the list of representations and certification at 204.1202(2) that are not to be included in the solicitation when using the provision DFARS 252.204-7007, because that provision is to be used in non-commercial solicitations only. Another respondent recommended that DFARS 204.1202(2) include provisions that are applicable to solicitations, rather than those not applicable, similar to FAR 52.204-8.

Response: The first respondent is correct that DFARS provision 252.212-7000 is for commercial solicitations only and will not be included in solicitations that include DFARS 252.204-7007, because that provision is used when FAR 52.204-8 is included, and that FAR provision is not used in solicitations issued under FAR part 12 for acquisition of commercial items. However, inclusion of DFARS 252.212-7000 on the list at DFARS 204.1202(2) is not appropriate, because the list at DFARS 204.1202(2) should include only provisions that are listed in 252.204-7007, Alternate A, Annual Representations and Certifications. Therefore, the final rule does not retain 252.212-7000 on the list at 204.1202(2). Further, DFARS 204.1202(2) introductory text was amended to clarify that the listed provisions will not be included separately in the solicitation, because the appropriate representations and certifications will be covered by inclusion of DFARS 252.204-7007 in the solicitation.

Comment: A respondent recommended the representations at DFARS 252.216-7003 and DFARS 252.239-7011 be retained in the list of representations and certifications at DFARS 252.204-7007 because the Contractor is asked to make a representation about itself.

Response: DFARS 252.216-7003 will be retained in the list. DFARS 252.239-7011, however, will not be included because the clause requires contractors to make certain representations during contract performance concerning reimbursement of special construction and equipment costs. According to DFARS 239.7408-1(a), “special

construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements.” Since these are costs that occur during contract performance, the contractor would not be able to make a proper representation prior to award.

B. Clarification

Comment: A respondent recommended modifying the second sentence of DFARS 252.204.7007(e) by removing “as indicated in (d) and (e) of this provision” and adding “as well as those in (d) above” after “posted electronically.”

Response: When using the alternate at DFARS 252.204-7007, paragraphs (d) and (e) replace paragraph (d) of FAR 52.204-8. DFARS 252.204-7007(e) provides that by submission of an offer, the offeror verifies that the FAR 52.204-8(c) representations and certifications and the DFARS 252.204-7007(d) representations and certifications are up to date in ORCA. Accordingly, the language in paragraph (e) was changed to include the statement “as indicated in FAR 52.204-8(c) and paragraph (d) of this provision.”

Comment: A respondent commented that the second to last line of 252.204-7007(e) should say “provision number” instead of “clause number.”

Response: The term “clause number” was changed to “provision number” in the second to last line of 252.204-7007(e) and in the first block of the table provided.

C. Additional Changes

DFARS 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, which was inadvertently omitted from the listing of provisions, has been added to 204.1202(2)(i) and 252.204-7007(d)(1)(i). The Alternates for 252.225-7020, Trade Agreements Certificate, and 252.225-7035, Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate, were added to 252.204-7007(d)(2)(iii), and (vi), respectively.

Additionally, to further clarify applicability of the various provisions, 252.204-7007(d) was reformatted into two sections to separately list the DFARS provisions that the contracting officer may individually select if one of the provisions applies for a particular

procurement. Additionally, the prescription for use of 252.204–7007 was reformatted to include it as a lead in to the provision rather than being a part of the provision.

III. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning for the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses.

A proposed rule published in the **Federal Register** at 75 FR 73997, on November 30, 2010, invited comments from small businesses and other interested parties. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.1202 is revised to read as follows:

204.1202 Solicitation provision.

When using the provision at FAR 52.204–8, Annual Representations and Certifications—

- (1) Use the provision with 252.204–7007, Alternate A, Annual Representations and Certifications; and
- (2) Do not include separately in the solicitation the following provisions, which are included in DFARS 252.204–7007:
 - (i) 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country.
 - (ii) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus.
 - (iii) 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.
 - (iv) 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.
 - (v) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.
 - (vi) 252.225–7020, Trade Agreements Certificate.
 - (vii) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.
 - (viii) 252.225–7031, Secondary Arab Boycott of Israel.
 - (ix) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.
 - (x) 252.225–7042, Authorization to Perform.
 - (xi) 252.229–7003, Tax Exemptions (Italy).
 - (xii) 252.229–7005, Tax Exemptions (Spain).
 - (xiii) 252.247–7022, Representation of Extent of Transportation by Sea.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.204–7007 is revised to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

As prescribed in 204.1202, use the following provision:

Alternate A, Annual Representations and Certifications (Sep 2011)

Substitute the following paragraphs (d) and (e) for paragraph (d) of the provision at FAR 52.204–8:

(d)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country. Applies to all solicitations expected to result in contracts of \$150,000 or more.

(ii) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus. Applies to all solicitations and contracts with institutions of higher education.

(iii) 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government. Applies to fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iv) 252.225–7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(v) 252.229–7003, Tax Exemptions (Italy). Applies to solicitations and contracts when contract performance will be in Italy.

(vi) 252.229–7005, Tax Exemptions (Spain). Applies to solicitations and contracts when contract performance will be in Spain.

(vii) 252.247–7022, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

(2) The following representations or certifications in ORCA are applicable to this solicitation as indicated by the Contracting Officer: [*Contracting Officer check as appropriate.*]

____(i) 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.

____(ii) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

____(iii) 252.225–7020, Trade Agreements Certificate.

____Use with Alternate I.

____(iv) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.

____(v) 252.225–7031, Secondary Arab Boycott of Israel.

____(vi) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

____Use with Alternate I.

____Use with Alternate II.

____Use with Alternate III.

(e) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at <https://orca.bpn.gov/>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204–8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the

NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes

identified below [*offeror to insert changes, identifying change by provision number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in

this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS provision No.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

RIN 0750-AH05

Defense Federal Acquisition Regulation Supplement; Passive Radio Frequency Identification (DFARS Case 2010-D014)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements relating to the use of passive radio frequency identification (RFID).

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Dustin Pitsch, telephone 703-602-0289.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 76 FR 9714 on February 26, 2011, in response to a request of the Office of Logistics and Materiel Readiness of the Office of the Secretary of Defense (Acquisition, Technology, and Logistics) to update requirements relating to the use of passive radio frequency identification (RFID).

II. Discussion and Analysis

DoD received comments from two respondents in response to the proposed rule. One respondent expressed general support for the rule.

Comment: A respondent stated that RFID tags will play an expanded role in inventory management and asset

protection for the DoD and expanded use should occur soon.

Response: DoD agrees that RFID use in inventory management is expanding and will continue to expand.

Comment: A respondent stated that RFID tracking is not the current industry standard for inventory management of pharmaceuticals and that adding this requirement would cost the suppliers and DoD a significant amount of time and money to implement. This respondent believes that the current use of 2D barcodes is sufficient for tracking pharmaceuticals and that the DoD should not require the use of passive RFID.

Response: DoD agrees and the final rule does not include a requirement for passive RFID use for pharmaceuticals.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows.

The DFARS previously listed approximately 20 specific DoD activity addresses and provides the authority for using other ship-to locations “outside the contiguous United States” under certain circumstances. However, the Defense Logistics Agency and the Navy proposed adding more than 200 additional sites, making it impracticable to list all DoD passive RFID addresses in

the DFARS text or its associated clause. Instead, this rule adds a Web site for contractors to find the RFID Identifier for each specific DoD ship-to address that uses RFID technology. Including the Web site in the DFARS has the added benefit of enabling the addition of new ship-to addresses in the future as necessary without the need to revise the DFARS in each case. This final rule amends the revised, shortened list of ship-to addresses at DFARS 211.275-2(a)(2) to allow contracting officers to add tagging requirements to contract deliverables shipping to DoDAACs not specifically included in the list as they deem necessary.

The current OMB information collection justification for the clause associated with the current DFARS, 252.211-7006, entitled “Radio Frequency Identification,” lists the number of contractors impacted by the RFID requirement as 25,500. While each contractor has multiple submissions (one for each shipment), it takes only 1.12 seconds per response. The rule changes impact, if any, should decrease the response time and not increase it.

V. Paperwork Reduction Act

There are information collection requirements associated with the use of RFIDs. However, there will be no substantive change to the existing information collection requirements currently approved under OMB Information Control Number 0704-0434, DFARS; Radio Frequency Identification Advance Shipment Notices. Therefore, DoD has determined that the final rule has no material impact on the approved collection.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are amended as follows:

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

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.