

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 12, 2011.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 204, 212, and 252

RIN 0750-AH02

#### Defense Federal Acquisition Regulation Supplement (DFARS), Alternative Line-Item Structure (DFARS Case 2010-D017)

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a standard procedure for offerors to propose an alternative line-item structure that reflects the offeror's business practices for selling and billing commercial items and initial provisioning spares for weapon systems. A new solicitation provision is provided to facilitate offerors' ability to propose such changes to the solicitation structure in their offer.

**DATES:** Comments on this proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2010-D017, using any of the following methods:

- **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010-D017" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010-D017." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010-D017" on your attached document. Follow the instructions for submitting comments.

- **E-mail:** [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2010-D017 in the subject line of the message.

- **Fax:** 703-602-0350.

- **Mail:** Defense Acquisition Regulations System, Attn: Mr. Julian Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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

#### I. Background

DoD is proposing to add new DFARS language that provides offerors the opportunity to propose an alternative line-item structure in solicitations for commercial items and initial provisioning spares. This proposed DFARS change will allow offerors to provide information about their products that may not have been known to the Government prior to issuance of the solicitation.

DoD identified the need to propose an alternative line-item structure during process reviews and working group sessions that assessed destination-acceptance procedures. The process reviews performed by DoD cross-service working groups, which were chartered by the Defense Finance and Accounting System, examined issues causing problems in the receipt and acceptance phase for contract deliverables and payments.

This group determined that the level of detail in the requirements description and line-item structure is not always sufficient for delivery, payment, and

subsequent inventory management of the items delivered. For example, the contract line item may be for a desktop computer, but the actual items delivered, invoiced, and inventoried may reflect a separate monitor, keyboard, and central processing unit. The resultant misalignment of transaction detail (*i.e.*, contract line item, invoiced unit, delivery and inventory unit) is the cause of failures in the electronic processes of the DoD's business enterprise requiring manual intervention with potential delays in contractor payment.

To address this recurring problem, this rule is establishing and standardizing a process to enable offerors to propose changes in their offer to the solicitation's line-item structure. Establishing such a process is a first step towards managing variation in these transactions by eliminating or reducing manual intervention.

#### II. Proposed DFARS Changes

DoD is proposing to revise the DFARS by adding—

- Paragraph (g) at 204.7103-1, Criteria for establishing;
- A provision prescription at 204.7109(b);
- Reference to the new provision at 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items; and
- A provision at 252.204-70XX, Alternative Line-Item Structure.

Although DoD believes the authority to use an alternative line-item structure currently exists within the Federal Acquisition Regulation (FAR), offerors may not be aware of, or be reluctant to use, this authority to propose an alternative line-item structure. For example—

- FAR 15.203(a)(2) permits the contracting officer to authorize offerors to propose alternative terms, conditions, and contract line-item number structure.
- FAR 12.213, Other Commercial Practices, encourages the contracting officer to consider other commercial practices for incorporation into the solicitation and contract, if appropriate. FAR 52.212-1(e), Instructions to Offerors—Commercial Items, Multiple Offers, encourages offerors to submit multiple offers presenting alternative terms and conditions for commercial items for satisfying the requirements of the solicitation.

Notwithstanding the above, offerors may not understand that they have this latitude as they are not proposing alternate line-item structure to reflect

their business practices. DoD expects that formalizing the ability to propose an alternative line-item structure in a standard DFARS provision for commercial items and initial provisioning spares for weapon systems will prevent contract administration and payment problems. Therefore, DoD welcomes public comment on this subject.

### III. Executive Order 12866 and Executive Order 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 does not expect this rule to 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.*, because the rule does not impose any additional requirements on small businesses. Further, this change does not add to, or delete from existing requirements or authorities for entities to include alternative line-item structures in their offers. This rule is formalizing a process to facilitate offerors' ability to request changes to the line-item structure. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS case 2010–D017), in correspondence.

### V. Paperwork Reduction Act

The rule does not impose any new 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, 212, and 252

Government procurement.

Mary Overstreet,

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 204, 212, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continue to read as follows:

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

### PART 204—ADMINISTRATIVE MATTERS

2. Amend Section 204.7103–1 by adding paragraph (g) to read as follows:

#### 204.7103–1 Criteria for establishing.

\* \* \* \* \*

(g) Certain commercial items and initial provisioning spares for weapons systems are requested and subsequently solicited using units of measure such as kit, set, or lot. However, there are times when individual items within that kit, set, or lot are not grouped and delivered in a single shipment. This creates potential contract administration issues with inspection, acceptance, and payment. In such cases, solicitations should be structured to allow offerors to provide information about products that may not have been known to the Government prior to solicitation and propose an alternate line-item structure as long as the alternate is consistent with the requirements of DFARS 204.71, which provides explicit guidance on the use of contract line items and subline items, and PGI 204.71.

3. Revise section 204.7109 to read as follows:

#### 204.7109 Contract clauses.

(a) Use the clause at 252.204–7006, Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108(d)(1) through (6); or

(2) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

(b) Use the provision at 252.204–70XX, Alternative Line-Item Structure, in solicitations for commercial items and initial provisioning spares.

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 212.301 by revising paragraph (f)(iv) to read as follows:

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

(f) \* \* \*

(iv) Use provisions and clauses prescribed elsewhere in DFARS as follows:

(A) Use the provision at 252.204–70XX, Alternative Line Item Structure, as prescribed in 204.7109(b).

(B) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104–70(a).

(C) Use the clause at 252.211–7003, Item Identification and Valuation, as prescribed in 211.274–4.

(D) Use the clause at 252.211–7006, Radio Frequency Identification, as prescribed in 211.275–3.

(E) Use the provision at 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in 225.7003–5(b).

(F) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402–4.

(G) Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that include the clause at 252.225–7040.

(H) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

(I) Use the clause at 252.232–7010, Levies on Contract Payments, as prescribed in 232.7102.

(J) Use the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations, as prescribed in 232.908.

(K) Use the clause at 252.246–7003, Notification of Potential Safety Issues, as prescribed in 246.371.

(L) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e).

(M) Use the clause at 252.247–7027, Riding Gang Member Requirements, as prescribed in 247.574(f).

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. Add section 252.204–70XX to read as follows:

**252.204–70XX Alternative Line-Item Structure.**

As prescribed in 204.7109(b), insert the following provision:

**ALTERNATIVE LINE-ITEM STRUCTURE (DATE)**

(a) Line items are the basic structural elements in a solicitation or contract that provide for the organization of contract requirements to facilitate pricing, delivery, inspection, acceptance and payment. Line items are organized into contract line items, subline items, and exhibit line items. Separate line items should be established to account for separate pricing, identification (see DFARS 211.274), deliveries, or funding. The Government recognizes that the line item structure in this solicitation may not conform to every offeror's practices. Failure to correct

these issues can result in difficulties in accounting for deliveries and processing payments. Therefore, offerors are invited to propose an alternative line item structure for items on which bids, proposals, or quotes are requested in this solicitation to ensure that the resulting contract structure is economically and administratively advantageous to the Government and the Contractor.

(b) If an alternative line-item structure is proposed, the structure must be consistent with DFARS 204.71 and PGI 204.71. A sample line-item structure and a proposed alternative structure are as follows:

**Solicitation**

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

Alternative line-item structure offer where monitors are shipped separately.

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 Part 213**

**RIN 0750–AH07**

**Defense Federal Acquisition Regulation Supplement; Ships Bunkers Easy Acquisition (SEA) Card® and Aircraft Ground Services (DFARS Case 2009–D019)**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to allow the use of U.S. Government fuel cards in lieu of a Purchase Order-Invoice-Voucher for fuel, oil, and refueling-related items for purchases not exceeding the simplified acquisition threshold.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before June 20, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009–D019, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “DFARS Case 2009–D019” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2009–D019.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2009–D019” on your attached document. Follow the instructions for submitting comments.

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009–D019 in the subject line of the message.

*Fax:* 703–602–0350.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, Telephone: 703–602–1014.

**SUPPLEMENTARY INFORMATION:****I. Background**

The military services and the U.S. Coast Guard have small vessels that must procure fuel away from their home stations. Due to their smaller size and unique mission requirements, these vessels are unable to use the Defense Energy Support Center (DESC) bunkers contracts at major seaports. Previously, DFARS 213.306(a)(1)(A) authorized only the use of the Aviation Into-plane Reimbursement (AIR) Card® up to the simplified acquisition threshold specifically for aviation fuel and oil. Refueling stops often include other ground refueling-related services that exceed the micro-purchase threshold. Due to port restrictions on vessel movements, bunkering merchants do not typically provide support to smaller vessels. These smaller vessels frequent “marina-type merchants.” These small vessels fulfill valid mission needs in direct support of national security. Unlike larger vessels with more predictable movements, small vessels’ needs are often unpredictable and far-reaching geographically.

DoD proposes to add language at DFARS section 213.306(a)(1)(A) to include purchases of marine fuel, oil, and refueling-related items using the Ships Bunkers Easy Acquisition (SEA)