

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Amended]

- 11. Amend section 252.203–7000 by—
- (a) Removing the clause date of “(JAN 2009)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (a)(2)(i) introductory text, removing “403(16)” and adding in its place “131”; and
- (c) In paragraph (c), removing “423(e)(3)” and adding in its place “2105(c)”.

252.212–7001 [Amended]

- 12. Amend section 252.212–7001 by—
- (a) Removing the clause date of “(AUG 2011)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (b)(2) removing “Section” and adding in its place “section”;
- (c) In paragraph (b)(2) removing the word “note”.

252.219–7003 [Amended]

- 13. Amend section 252.219–7003 by—
- (a) Removing the clause date of “(OCT 2010)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (d), removing “46–48” and adding in its place “8502–8504”.

252.225–7001 [Amended]

- 14. Amend section 252.225–7001 by—
- (a) Removing the clause date of “(JAN 2009)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (b), removing “Section 10a-d” and adding in its place “chapter 83”; and
- (c) In paragraph (b) removing “431” and adding in its place “1907”.

252.227–7037 [Amended]

- 15. Amend section 252.227–7037 by—
- (a) Removing the clause date “(SEP 1999)” and adding in its place “(SEP 2011)”;
- (b) In paragraph (e)(3), removing “601, *et seq.*” and adding in its place “7101”.

APPENDIX I TO CHAPTER 2—[Amended]

- 16. Amend section I–101.4 by removing “46” and adding in its place “8502”.

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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: Final rule.

SUMMARY: DoD is issuing a final rule amending 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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 21847 on April 19, 2011, to add DFARS language that provides offerors the opportunity to propose an alternative line item structure in solicitations for commercial items and initial provisioning spares. This 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. No public comments were received regarding the proposed rule.

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 establishes and standardizes 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. 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 not a significant regulatory action and, therefore, was not 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.

III. 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 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.

IV. Paperwork Reduction Act

The rule does not contain 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, 212, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

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

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.7103 by adding a new 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 204.71, which provides explicit guidance on the use of contract line items and subline items, and with PGI 204.71.

■ 3. Revise section 204.7109 to read as follows:

204.7109 Solicitation provision and contract clause.

(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 252.204–7011, 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 the provisions and clauses prescribed elsewhere in DFARS as follows:

(A) Use the provision at 252.204–7011, 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).

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 252.204–7011 to read as follows:

252.204–7011 Alternative Line Item Structure.

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

ALTERNATIVE LINE-ITEM STRUCTURE (SEP 2011)

(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 section 211.274 of the Defense Federal Acquisition Regulation Supplement), 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 subpart 204.71 of the Defense Federal Acquisition Regulation Supplement and PGI 204.71. A sample solicitation line-item structure and a corresponding offer of a proposed alternative line-item structure follow.

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 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