DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

19 July 2004

MEMORANDUM FOR ALL USACE COMMANDS (DIRECTORS/CHIEFS OF CONTRACTING)

SUBJECT: PARC Instruction Letter (PIL) 2004-11, DAR Council Highlights, June 3, 2004

1. Reference Email from Barbara Binney, SAAL-PP, sent June 7, 2004, SAB.

2. The enclosed DAR Council Highlights are provided for information and necessary action as appropriate. Of particular note are (1) Class Deviation – Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item, and (2) Unique Item Identification (DFARS Case 2003-D081).

3. CEPR POC: Dave Petersen, 202-761-0327.

FOR THE COMMANDER:

Encl

Bunnatine H. Greenhouse
BUNNATINE H. GREENHOUSE
Principal Assistant Responsible
for Contracting

Morton, Gail R HQ02

From: Binney, Barbara Ms SAALT [barbara.binney@us.army.mil]
Sent: Monday, June 07, 2004 8:43 AM
To: PARC; POLICY CHIEFS/PARC Offices; Lumer, Mark Mr SAALT
Cc: Clarke, Emily Ms SAALT; Cornett, Edwin Mr SAALT; Patterson, Margaret K Ms OTJAG
Subject: DAR Council Highlights, June 3, 2004

All,

Here are some highlights from this week's meeting.

New Cases:

2004-011 - Subcontracting credit for multiple-award schedules, government-wide acquisition contracts and multiple-award contracts. This FAR case will revise part 19.704 to allow agencies that place orders with large businesses that hold multiple-award indefinite quantity, indefinite delivery contracts to receive credit towards their subcontracting goals with SBA.

2004-016 - Trade agreements - restriction on acquisition of services. This FAR case will add a provision that implements the restriction on acquisition of services in acquisition subject to the Trade Agreements Act WTO Government Procurement Agreement. (FAR cites 25.1103, 52.225)

Class deviation:

Class deviation - Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item, dated May 18, 2004. The attached Director, DPAP memo authorizes deviation from the DFARS requirements to apply the Buy American Act or Balance of Payments Program to acquisition of information technology that is a commercial item when using fiscal year 2004 funds. The deviation allows contracting officers not to use the DFARS provisions and clauses 252.225-7000, 252.225-7001, 252.225-7035, and 252.225-7036. The deviation will remain in effect until incorporated in the DFARS or until otherwise rescinded.

Class Deviation-Exemption from..

The following DFARS rules (proposed, interim and final) will be published in the Federal Register on Tuesday, June 8, 2004:

2004-D001, (T) Reporting Contract Performance Outside the United States (Proposed)

2003-D105, Contracting for Architect-Engineer Services (Interim)

2003-D104, Written Assurance of Technical Data Conformity (Interim)

2003-D074, (T) Acquisition of Commercial Items (Proposed)

2002-D034, Fish, Shellfish, and Seafood Products (Final)

2002-D023, Follow-On Production Contracts for Prototype Projects (Final)

2002-D015, Production Surveillance and Reporting (Final)

Cases discussed this week were as follows:

2003-D084 (T) Part 204, Administrative Matters Related to Contract Placement
Transportation Standard Industry Practices

2002-05 Transportation: Standard Industry Practices

2004-D007 Assignment of Contract Administrations - Exceptions for Defense Energy Support Center

2003-025 Telecommuting for Federal Contractors

Other Information:

Unique Item Identification (DFARS Case 2003-D081) - DPAP has received complaints from Contractors that the services are not using this interim rule properly. It was published twice in the Federal Register on Oct 10, 2003 vol 68, pages 58631 - 58635 and again with request for comments on Dec 30, 2003 vol 68, pages 75196 to 75202. This interim rule requires DOD Contractors to provide unique identification for items delivered to DoD, through the use of item identification marking. Also, it requires DoD contractors to identify the Government's unit acquisition cost of all hardware items delivered under a contract. The effective date is January 1, 2004 and applies to all solicitations issued on or after that date.

2003-D081 Fed Reg 75196A Dec 3...

To review DFARS cases go to web site http://www.acq.osd.mil/dpap/dars/index.htm and for

FAR Cases go to http://www.arnet.gov/far/

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WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAY 18 2004

DPAP(DAR)

In reply refer to
DAR Tracking Number: 2004-O0003

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY,
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND
SUPPLY DIRECTORATE (DLA)

SUBJECT: Class Deviation–Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item

When using fiscal year 2004 funds to acquire information technology that is a commercial item, do not use any of the following Defense Federal Acquisition Regulation Supplement (DFARS) provisions and clauses as prescribed at DFARS 225.1101(1), (2), (9), and (10) or the associated FAR clauses which they otherwise replace:

- 252.225-7000, Buy American Act—Balance of Payments Program Certificate.
- 252.225-7001, Buy American Act and Balance of Payments Program.
- 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.
- 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

The Buy American Act does not apply to these acquisitions of foreign information technology because Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199) provides exemption (Atch 1). "Information technology" is defined at 40 U.S.C. 11101 (Atch 2).

When applicable, continue to use the Trade Agreements provision and clause at 252.225-7020 and 252.225-7021, as prescribed at 225.1101(5) and (6).

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

cc:
DSMC, Ft. Belvoir

viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments—Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

This rule proposing to approve revisions which amend the Baltimore area's ROP plan for the 2005 milestone year to update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 and which amend the contingency measures associated with the 2005 ROP plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 19, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–32028 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

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 Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to unique item identification and valuation. This rule contains changes resulting from comments received in response to an interim rule published in the **Federal Register** on October 10, 2003.

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 March 1, 2004, 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

DoD published an interim rule in the **Federal Register** on October 10, 2003, applicable to all solicitations issued on or after January 1, 2004. The interim rule established 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.

Twenty-six sources submitted comments on the interim rule. As a result of the significance of the comments, DoD has issued a second interim rule. The following is a discussion of the comments and the differences between the two rules. Where appropriate, similar comments have been grouped together.

1. *Comment:* Several comments were made with regard to the aggressiveness of the implementation schedule commencing January 1, 2004.

DoD Response: DoD agrees that the implementation schedule is aggressive. DoD considers the implementation of unique identification to be a strategic imperative, necessary to efficiently move supplies to warfighters. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops; will enable DoD to consistently capture the value of items it buys, control these items during their use, and combat counterfeiting of parts; and will 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. Therefore, the implementation schedule can not be slipped. The clarification and streamlining of the "valuation" process in this new interim rule should assist in making implementation commencing January 1, 2004, achievable.

2. *Comment:* Several comments were made with regard to the timing of this new requirement, and the need to implement on an accelerated schedule when the aviation industry is suffering from the worst business conditions in the history of the industry.

DoD Response: DoD agrees that the implementation schedule is aggressive. A DoD Policy memo dated November 26, 2003, provides some relief for the aviation industry by including marking consistent with 14 CFR Part 45, Identification and Registration Marking, for aircraft, aircraft engines, propellers, propeller blades, and hubs as consistent with DoD unique identification policy.

3. *Comment:* Several comments were made with regard to the possibility of waivers from or exceptions to the new requirement.

DoD Response: The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. No waivers or exceptions can be granted.

4. *Comment:* Several comments were made with regard to citing MIL–STD–130K, recommending that the more current version be cited.

DoD Response: The rule is consistent with the current MIL–STD–130L. However, the clause at 252.211–7003 has been amended to eliminate reference to a specific MIL–STD–130 version, and to instead require compliance with the version of MIL–STD–130 cited in the contract Schedule.

5. *Comment:* Numerous comments were received addressing difficulties and confusion with the policy inserted in DFARS 204.7103 and 204.7104 concerning contract line and subline item number structure.

DoD Response: The policy added to DFARS 204.7103 and 204.7104 by the previous interim rule has been removed. The existing policy in DFARS Subpart 204.71 for contract line, subline, and exhibit line item structure is sufficient for the requirements of this rule. Valuation information will be included in the Material Inspection and Receiving Report provided at the time of delivery.

6. *Comment:* Numerous comments were received addressing the methodology for assessing the Government's acquisition cost of items for cost-type contracts.

DoD Response: As a result of the concerns raised in the comments, DoD has redefined the Government's unit acquisition cost for cost-type line, subline, or exhibit line items, as the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

7. *Comment:* Comments were received highlighting confusion among the definitions for "unique item identifier," "unique item identification," and the DoD data elements of unique identification.

DoD Response: As a result of the concerns raised in the comments, DoD has amended the clause at DFARS 252.211–7003 to add a definition of "DoD unique item identification" and to clarify the definition of "DoD recognized unique identification equivalent, including a reference to the Web site at *http://www.acq.osd.mil/uid,* where all DoD recognized unique identification equivalents are listed.

8. *Comment:* Numerous comments were received highlighting the cost of implementing these requirements, and five comments were received citing the cost burden of implementing these requirements for small businesses.

DoD Response: DoD has determined that it is a strategic imperative that items valued at or above $5,000, or meeting other specified conditions, be marked with unique identification. There are no exceptions. Small businesses will find there are a number of vendors, many of them small businesses, that can provide unique identification marking assistance. DoD considers the cost of implementing unique identification requirements to be an allowable cost under FAR Part 31.

9. *Comment:* Several comments cited confusion as to what items specifically require unique identification and which do not.

DoD Response: As a result of the concerns raised in the comments, DoD has restructured the policy in DFARS 211.274 and the clause at 252.211–7003 to clarify that all items over $5,000 in value require unique identification,

items under $5,000 requiring unique identification must be identified in paragraph (c)(1)(ii) of the clause, and embedded items that require unique identification will be identified in a Contract Data Requirements List or other exhibit that is cited in paragraph (c)(1)(iii) of the clause.

10. *Comment:* A respondent suggested that a Contract Data Requirements List be used for unique identification when required below the contract line or subline item level.

DoD Response: DoD has revised the rule so that subassemblies, components, and parts that are embedded in items that require unique identification will be identified in a Contract Data Requirements List or other exhibit that is cited in paragraph (c)(1)(iii) of the clause at DFARS 252.211–7003.

11. *Comment:* Several respondents suggested that unique identification is inconsistent with FAR Part 12, Acquisition of Commercial Items, and that an exception be made for items acquired under FAR Part 12 contracts.

DoD Response: Do not concur. The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. DoD acquires a large number of items under FAR Part 12 contracts. These items can not be excluded from unique identification requirements.

• 12. *Comment*: A respondent asked whether unique identification requirements will apply to classified contracts; another respondent asked whether the requirements will apply to foreign military sales contracts.

DoD Response: Yes. There are no exceptions to the policy.

13. *Comment*: Several respondents cited problems and confusion resulting from the requirement that acquisition cost be identified a contract line, subline, or informational subline item when structuring the contract, while acquisition cost for cost-type contracts could not be identified until delivery.

DoD Response: The rule has been revised to clarify that the contractor is required to provide the unique identification and the acquisition cost at the time of delivery.

14. *Comment*: Several comments were received concerning applicability of the rule to existing contracts, orders under existing basic ordering agreements (BOAs), and options under existing contracts.

DoD Response: The rule applies to new solicitations issued on or after January 1, 2004. DoD Policy memorandum dated November 26, 2003, Update to Policy for Unique Identification (UID) of Tangible Items—New Equipment, Major Modifications, and Reprocurements of Equipment and Spares, addresses this issue as follows: "The UID policy strongly encourages Component Acquisition Executives to incorporate UID requirements into ongoing contracts where it makes business sense to do so. Since BOAs awarded before January 1, 2004, would be an ongoing agreement, UID requirements can be included in orders issued under the BOA whenever the program/item manager determines it is feasible to do so." Component Acquisition Executives should also incorporate UID requirements when exercising options where it makes business sense to do so.

15. *Comment*: A respondent suggested unique identification is inconsistent with the simplified acquisition threshold, and that the prescription for the clause at DFARS 252.211–7003 should exclude contracts below the simplified acquisition threshold.

DoD Response: Do not concur. The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. Items acquired under the simplified acquisition threshold can not be excluded from unique identification requirements.

16. *Comment*: The semantics/syntax (ISO 15434/15418) use unprintable characters for record separators and group separators. It is impossible for the quality organization to verify the validity of the 2D Matrix content if the visual representation of "required" characters is, in-effect, "invisible (unprintable)". As a part is marked, the ISO 9000 quality requirements specify that the content of the information encoded into the 2D Matrix be verified. "Invisible" characters are "impossible" to verify. As so, this solution may not be ISO 9000 compliant. This should be verified.

DoD Response: The only standard that uses unprintable characters for record separators and group separators is ISO/IEC 15434. It will be sufficient to verify only that the software of the automatic information technology readers and printers used to construct and print the data matrix symbol is compliant with ISO/IEC 15434.

17. *Comment*: Procedures should be developed to address how unique identification will be constructed when the Government buys items that are surplus, remanufactured, or overhauled after initial manufacture.

DoD Response: If the item does not already have unique identification and meets the criteria for unique identification, the enterprise furnishing the item must provide unique identification marking as part of the purchase price.

18. *Comment*: In research and development contracting, software is often a deliverable item. In some cases, the software to be delivered is commercial software, and the acquisition cost would be the price paid for the license. However, most of the software being delivered under a research and development contract is software that was developed during performance. The "item" definition neither includes nor excludes software. Is commercial software considered an "item" by definition. Is developed software considered an "item"? Both are required to be delivered, are produced, and are tangible. However, one could also argue that developed software is data, because the source and object code and manuals are delivered via the use of Contract Data Requirements Lists. Therefore, the acquisition cost of the medium (CD, disk) in which the software is delivered would be minimal and would not meet the threshold requirements of the clause.

DoD Response: For purposes of unique identification and valuation, software, manuals, and other forms of information are not considered to be "items". The definition of "item" has been changed to refer to "a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts" to clarify this point.

19. *Comment*: Two respondents suggested there is no value to the rule.

DoD Response: Do not concur. These are subjective judgments. DoD finds considerable value in the rule.

20. *Comment*: One respondent suggested that the rule was unclear and should be redrafted.

DoD Response: DoD has redrafted significant portions of the rule to improve clarity.

21. *Comment*: One respondent asked how the Government would identify which type of identification system the contractor is using, if multiple choices were allowed, and whether Government personnel would have to be educated on the different identification systems?

DoD Response: Marking must be in accordance with the version of MIL–STD–130 in effect at the time of contract award, regardless of the system used to mark items. Government personnel are familiar with the MIL–STD–130.

22. *Comment*: A respondent asked whether references to "cost" should be changed to "value," and whether all references to contract line item structure should be incorporated in the prescriptive language of DFARS Part

204 rather than DFARS Part 11 requirements policy.

DoD Response: For clarity, all references to "value" have been removed, and "unit acquisition cost" has been more clearly defined. This interim rule removes the prescriptive policy in DFARS Part 204 that was added by the previous interim rule.

23. *Comment*: A respondent asked whether valuation needs to be captured down to zero. The respondent suggested that the cost of capturing the value of low-dollar items under cost-type contracts may exceed the benefits.

DoD Response: The definition of "unit acquisition cost" under cost-type line items has been changed to capture the contractor's estimate of the Government's unit cost. This should avoid the unnecessary administrative burden envisioned by the respondent.

24. *Comment*: A respondent asked how development items are to be handled. For example, how will a subline item for development work on one or more pieces of hardware be identified and part numbered?

DoD Response: The estimated unit acquisition cost for a development item will be handled the same as the estimated unit acquisition cost for any other delivered item. The contractor will use its business judgment to provide the Government with its best estimate of the fully burdened cost to the Government.

25. *Comment*: A respondent asked how modification kits that are not separately stock listed items, but comprise several hundred individual parts/items, would be handled.

DoD Response: Modification kits will be handled the same as any other delivered item. Subassemblies, components, or parts that are embedded within the kit will need to be separately identified if unique identification is required, but acquisition cost will not be required.

26. *Comment*: A respondent suggested that the clause at DFARS 252.211–7003 should be limited to the marking requirements (formerly paragraphs (a) thru (c)) and the flow down requirement (formerly paragraph (f)). The respondent suggested that former paragraph (d), Item records, duplicates data that already exists either in the contract or on the associated DD 250/Memo of Shipment. The only exception is the unique identification itself.

DoD Response: Concur in part. The rule has been amended to specify that the data required by the clause will be submitted in the Material Inspection and Receiving Report. As a result, DoD was able to eliminate the DFARS part 204 line item structure requirements for this data.

27. *Comment*: A respondent suggested that the contractor should be told how long the assigned unique identification data should be maintained. For example, most contract data presently must be maintained until final contract payment plus 3 years. If the Government wished the unique identification data to be maintained longer, it should be stated here. Alternatively, if the only requirement is that the contractor ensure that a unique identifier is not duplicated, this is not a records retention requirement, but rather a requirement to ensure a system is set up to avoid duplication. Therefore, record retention would be up to the contractor.

DoD Response: The clause at DFARS 252.211–7003 defines "Unique item identifier" as 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.

28. *Comment*: A respondent suggested that the Valuation paragraph (formerly paragraph (e)) of the clause at 252.211–7003, is unnecessary. The assignment of value for items to be delivered to the Government should be a contracting officer responsibility under DFARS 204.7103. The language in the rule creates an additional "reporting" requirement that is inconsistent with existing processes and the Paperwork Reduction Act determination.

DoD Response: Do not concur. The valuation portion of the rule is the data currently provided on the DD Form 250, Material Inspection and Receiving Report.

29. *Comment*: DFARS Appendix F should be revised to specify the data the Government needs on the DD Form 250 or Memo of Shipment. These existing documents should be the vehicle through which the Government collects the desired data. Most of the data listed in the Item records paragraph (formerly paragraph (d)) of the clause at DFARS 252.211–7003 is already available in the contract and on the DD250/Memo of Shipment. The DFARS rule should require contractors to continue to provide that data on those documents with the addition of the unique identification specific data; once Wide Area WorkFlow revisions are fully operational, the Government will have the data and the mechanism to populate its data base without further contractor intervention.

DoD Response: Revisions to DFARS Appendix F are being considered separately under DFARS Case 2003–D085, as part of DoD's DFARS Transformation Initiative.

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 contains requirements for DoD contractors to provide unique identification for items delivered to DoD, through the use of item identification marking. In addition, the rule contains requirements for DoD contractors to identify the Government's unit acquisition cost of all hardware items delivered under a contract. The objective of the rule is to improve management of DoD assets. DoD considers this rule to be a strategic imperative, necessary to efficiently move supplies to warfighters. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101–576). The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives that will accomplish the objectives of the rule.

A copy of the analysis may be obtained from the point of contact specified herein.

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. This interim rule contains requirements for contractors to uniquely mark and to identify the Government's unit acquisition cost of items delivered to DoD. DoD considers the implementation of unique identification to be a strategic imperative, necessary to efficiently move supplies to warfighters. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops; will enable DoD to consistently capture the value of items it buys, control these

items during their use, and combat counterfeiting of parts; and will 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.

On October 10, 2003, DoD issued an interim rule to implement unique identification policy, effective January 1, 2004. As a result of public comments received on the interim rule, DoD has determined that significant changes are needed to streamline and clarify the rule and to ensure effective implementation of DoD's unique identification policy. 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

202.101 [Amended]

2. Section 202.101 is amended by removing the definition of "Unique item identifier", which was added at 68 FR 58632 on October 10, 2003, to become effective on January 1, 2004.

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 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)).

* * * * *

204.7104–2 [Amended]

4. Section 204.7104–2 is amended by removing paragraphs (e)(10) and (11), which were added at 68 FR 58632 on October 10, 2003, to become effective on January 1, 2004.

PART 211—DESCRIBING AGENCY NEEDS

5. Sections 211.274 through 211.274–3, which were added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, are revised to read as follows:

211.274 Item identification and valuation.

211.274–1 Item identification.

(a) DoD unique item identification, or a DoD recognized unique identification equivalent, is required for—

(1) All items for which the Government's unit acquisition cost is $5,000 or more;

(2) Items for which the Government's unit acquisition cost is less than $5,000, when determined necessary by the requiring activity for serially managed, mission essential, or controlled inventory equipment, repairable items, or consumable items or material; and

(3) Subassemblies, components, and parts embedded within an item identified on a Contract Data Requirements List or other exhibit (see *http://www.acq.osd.mil/uid*).

(b) If unique item identification is not required, the contractor shall provide commonly accepted commercial marks.

211.274–2 Government's unit acquisition cost.

(a) Contractors shall identify the Government's unit acquisition cost for all items delivered.

(b) The Government's unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery.

(2) For cost-type line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered 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).

(a) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which the requiring activity determines that DoD unique item identification or a DoD recognized unique identification equivalent is required.

(b) Complete paragraph (c)(1)(iii) of the clause with the applicable exhibit number or Contract Data Requirements List item number, when DoD unique item identification or a DoD recognized unique identification equivalent is required for subassemblies, components, or parts embedded within deliverable items.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

6. Section 212.301 is amended by redesignating paragraph (f)(vii), which was added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, as paragraph (f)(vi).

PART 243—CONTRACT MODIFICATIONS

243.171 [Amended]

7. Amendment 7 to section 243.171, which was published at 68 FR 58633 on October 10, 2003, is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.211–7003, which was added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, is revised 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.

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; or

(2) For items that are serialized within the original part number, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, original part number, and serial number within the part number.

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 and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at *http://www.acq.osd.mil/uid.*

DoD unique item identification means marking an item with a unique item identifier that has machine-readable data elements to distinguish it from all other like and unlike items. In addition—

(1) 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.

(2) 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.

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 unit acquisition cost means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery; and

(2) For cost-type line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

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

Item means a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts required to be delivered in accordance with the terms and conditions of this contract.

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) Code).

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.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at *http://www.acq.osd.mil/uid.*

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) *Unique item identification.*

(1) The Contractor shall provide DoD unique item identification, or a DoD recognized unique identification equivalent, for—

(i) All items for which the Government's unit acquisition cost is $5,000 or more; and

(ii) The following items for which the Government's unit acquisition cost is less than $5,000:

Contract Line, Subline, or Exhibit Line Item Number

_____

_____

_____

Item Description

_____

_____

_____

(iii) Subassemblies, components, and parts embedded within items as specified in Exhibit Number _____ or Contract Data Requirements List Item Number _____.

(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 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. The DoD collaborative solution is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at *http://www.acq.osd.mil/uid;* and

(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.

(4) *Marking items.*

(i) 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 (c)(1) of this clause in accordance with the version of MIL–STD–130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) *Commonly accepted commercial marks.* The Contractor shall provide commonly accepted commercial marks for items that are not required to have unique identification under paragraph (c) of this clause.

(e) *Material Inspection and Receiving Report.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Description.*

(2) Unique identifier**, consisting of—

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Quantity shipped.*

(9) Unit of measure.*

(10) Government's unit acquisition cost.*

(11) Ship-to code.

(12) Shipment date.

(13) Contractor's CAGE code or DUNS number.

(14) Contract number.

(15) Contract line, subline, or exhibit line item number.*

(16) Acceptance code.

* Once per contract line, subline, or exhibit line item.

** Once per item.

(f) *Material Inspection and Receiving Report for embedded subassemblies, components, and parts requiring unique item identification.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part, consisting of—

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Unit of measure.

(9) Description.

** Once per item.

(g) The Contractor shall submit the information required by paragraphs (e) and (f) of this clause in accordance with the procedures at *http://www.acq.osd.mil.uid.*

(h) *Subcontracts.* If paragraph (c)(1)(iii) of this clause applies, the Contractor shall include this clause, including this paragraph (h), in all subcontracts issued under this contract.

(End of clause)

[FR Doc. 03–31951 Filed 12–29–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031017264–3317–02; I.D. 100103C]

RIN 0648–AR48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; revision and request for comments.

SUMMARY: NMFS issues this proposed rule to provide information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. This proposed rule revises a previously published proposed rule based on public comments that were received on the initial proposed rule. In response to those public comments, this proposed rule includes additional options regarding the procedure for weighting votes by eligible participants. NMFS is soliciting additional public comment on this proposed rule and, particularly, comments on the vote-weighting options. The intended effect of this proposed rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received no later than 5 p.m., eastern time, on January 20, 2004.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA) are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *phil.steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

The following is a restatement of the material contained in the original proposed rule, with minor changes regarding: Scheduling; date and location of the Council meeting where results of the initial referendum, if approved, would be presented; and clarification of an example stated in the original proposed rule regarding the landings categories (poundage ranges) to be used. See "Additional Alternatives for a Vote-Weighting Formula," which follows this restatement of the original proposed rule, for a description of other vote-weighting alternatives that are under consideration and are provided for public comment. Restatement of the Original Proposed Rule Material.

Background

During the early to mid-1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and was scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ programs in any U.S. fishery, including the Gulf of Mexico red snapper fishery, before October 2000. Subsequent Congressional action, passage of HR5666, incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002. However, HR5666 also provided authority to the Council to develop a profile for any fishery under its jurisdiction that may be considered for a quota management system.

Under Section 407(c) of the Magnuson-Stevens Act, the Council is authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery, but only if certain conditions are met. First, the preparation of such a plan amendment and regulations must be approved in a referendum. If the result of the referendum is approval, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review and approval or disapproval must be approved in a subsequent referendum. Both referendums must be conducted in accordance with Section 407(c)(2). Section 407(c)(2) also specifies that, "Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) identify and notify all such persons holding permits with red snapper