

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36284, July 31, 1991, unless otherwise noted.

Subpart 201.1—Purpose, Authority, Issuance

201.104 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign mili-

tary sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

[56 FR 36284, July 31, 1991. Redesignated at 64 FR 39430, July 22, 1999]

201.105 Issuance.

201.105-3 Copies.

The DFARS and the DFARS Procedures, Guidance, and Information (PGI) are available electronically via the World Wide Web at <http://www.acq.osd.mil/dpap/dars/index.htm>.

[69 FR 63326, Nov. 1, 2004]

201.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in the DFARS unless—

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

[63 FR 11528, Mar. 9, 1998, as amended at 65 FR 39704, June 27, 2000]

201.109 Statutory acquisition-related dollar thresholds-adjustment for inflation.

(d) A matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available at PGI 201.109.

[71 FR 75892, Dec. 19, 2006]

201.170 Peer Reviews.

(a) *Acquisitions valued at \$1 billion or more.* (1) The Office of the Director, Defense Procurement and Acquisition Policy, will organize teams of reviewers and facilitate Peer Reviews for solicitations and contracts valued at \$1 billion or more, as follows:

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(i) Pre-award Peer Reviews will be conducted for all solicitations valued at \$1 billion or more (including options).

(ii) Post-award Peer Reviews will be conducted for all contracts for services valued at \$1 billion or more (including options).

(iii) Reviews will be conducted using the procedures at PGI 201.170.

(2) To facilitate planning for Peer Reviews, the military departments, defense agencies, and DoD field activities shall provide a rolling annual forecast of acquisitions with an anticipated value of \$1 billion or more (including options) at the end of each quarter (*i.e.*, March 31; June 30; September 30; December 31), to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301-3060.

(b) *Acquisitions valued at less than \$1 billion.* The military departments, defense agencies, and DoD field activities shall establish procedures for—

(1) Pre-award Peer Reviews of solicitations valued at less than \$1 billion; and

(2) Post-award Peer Reviews of contracts for services valued at less than \$1 billion.

[74 FR 37626, July 29, 2009]

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(AT&L), 3062 Defense Pentagon, Washington, DC 20301-3062; datafax (703) 602-0350:

I. PROBLEM: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating the change to the regulation.

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II. Recommendation: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, *e.g.*, automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

IV. Collaterals: Address the need for public comment (FAR 1.301(b) and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of 201.402(2). The justification should be in the form of a memorandum for the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996; 63 FR 11528, Mar. 9, 1998; 65 FR 6552, Feb. 10, 2000; 68 FR 7439, Feb. 14, 2003; 73 FR 70906, Nov. 24, 2008]

201.201-70 Maintenance of Procedures, Guidance, and Information.

The DAR Council is also responsible for maintenance of the DFARS Procedures, Guidance, and Information (PGI).

[69 FR 63326, Nov. 1, 2004]

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(a)(1) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense. The DFARS contains—

- (i) Requirements of law;
- (ii) DoD-wide policies;
- (iii) Delegations of FAR authorities;
- (iv) Deviations from FAR requirements; and
- (v) Policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

(2) Relevant procedures, guidance, and information that do not meet the criteria in paragraph (a)(1) of this section are issued in the DFARS Procedures, Guidance, and Information (PGI).

(b) When FEDERAL REGISTER publication is required for any policy, procedure, clause, or form, the department or agency requesting Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L)) approval for use of the policy, procedure, clause, or form (see 201.304(1)) must include an analysis of the public comments in the request for approval.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 65 FR 6552, Feb. 10, 2000; 69 FR 63326, Nov. 1, 2004]

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence. For exam-

ple, three paragraphs implementing FAR 19.501 would be numbered 219.501 (1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a) (i), (ii), and (iii) rather than (a) (1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A)(1)(i).

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S-70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S-70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.105-2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501-70. Its subdivisions would be numbered 219.501-70 (a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1-1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1-1—DFARS NUMBERING

FAR	Is implemented as	Is supplemented as
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501-70
19.501-1	219.501-1	219.501-1-70
19.501-1(a)	219.501-1(a)	219.501-1(a)(S-70)
19.501-1(a)(1)	219.501-1(a)(1)	219.501-1(a)(1)(S-70)

[56 FR 36284, July 31, 1991, as amended at 64 FR 51074, Sept. 21, 1999]

201.304 Agency control and compliance procedures.

Departments and agencies and their component organizations may issue acquisition regulations as necessary to

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implement or supplement the FAR or DFARS.

(1)(i) Approval of the USD (AT&L) is required before including in a department/agency or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that—

(A) Has a significant effect beyond the internal operating procedures of the agency; or

(B) Has a significant cost or administrative impact on contractors or offerors.

(ii) Except as provided in paragraph (2) of this section, the USD(AT&L) has delegated authority to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

(2) In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in a department/agency or component procurement regulation unless—

(i) The certification requirement is specifically imposed by statute; or

(ii) Written justification for such certification is provided to the Secretary of Defense by USD(AT&L), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

(3) Contracting activities must obtain the appropriate approval (see 201.404) for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.

(4) Each department and agency must develop and, upon approval by OUSD(AT&L)DPAP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments and agencies must submit requests for the Secretary of Defense, USD(AT&L), and OUSD(AT&L)DPAP approvals required by this section through the Director of the DAR Council.

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(6) The Director of Defense Procurement publishes changes to the DFARS in the FEDERAL REGISTER and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 63 FR 11528, Mar. 9, 1998; 64 FR 39430, July 22, 1999; 65 FR 6552, Feb. 10, 2000; 68 FR 7439, Feb. 14, 2003]

Subpart 201.4—Deviations From the FAR

201.402 Policy.

(1) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity;

(ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(iii) FAR part 30, Cost Accounting Standards Administration, or DFARS part 230, Cost Accounting Standards Administration;

(iv) FAR subpart 31.1, Applicability, or DFARS subpart 231.1, Applicability (contract cost principles);

(v) FAR subpart 31.2, Contracts with Commercial Organizations, or DFARS subpart 231.2, Contracts with Commercial Organizations; or

(vi) FAR part 32, Contract Financing (except subparts 32.7 and 32.8 and the payment clauses prescribed by subpart 32.1), or DFARS part 232, Contract Financing (except subparts 232.7 and 232.8).

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403, or 201.404, as appropriate. Submit deviations that require OUSD(AT&L)DPAP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation;

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR subpart 1.5 for publication requirements) in the FEDERAL REGISTER and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996; 64 FR 8727, Feb. 23, 1999; 65 FR 6552, Feb. 10, 2000; 68 FR 7439, Feb. 14, 2003]

201.403 Individual deviations.

(1) Individual deviations, except those described in 201.402(1) and paragraph (2) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(2) Contracting officers outside the United States may deviate from prescribed nonstatutory FAR and DFARS clauses when—

(i) Contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations; and

(ii) Such governments or organizations will not agree to the standard clauses.

[65 FR 6552, Feb. 10, 2000]

201.404 Class deviations.

(b)(i) Except as provided in paragraph (b)(ii) of this section, OUSD(AT&L)DPAP is the approval authority within DoD for any class deviation.

(ii) The senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency, the Defense Contract Management Agency, and the Defense Logistics Agency, may approve any class deviation, other than those described in 201.402(1), that does not—

(A) Have a significant effect beyond the internal operating procedures of the department or agency;

(B) Have a significant cost or administrative impact on contractors or offerors;

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business Administration and the Department of Labor.

[65 FR 6552, Feb. 10, 2000, as amended at 65 FR 52951, Aug. 31, 2000; 68 FR 7439, Feb. 14, 2003]

Subpart 201.6—Career Development, Contracting Authority, and Responsibilities

201.602 Contracting officers.

201.602-2 Responsibilities.

(1) Follow the procedures at PGI 201.602-2 regarding designation, assignment, and responsibilities of a contracting officer's representative (COR).

(2) A COR—

(i) Must be a Government employee, unless otherwise authorized in agency regulations;

(ii) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;

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(iii) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office;

(iv) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and

(v) Must be designated in writing, and a copy furnished the contractor and the contract administration office—

(A) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(B) Identifying the limitations on the COR's authority;

(C) Specifying the period covered by the designation;

(D) Stating the authority is not delegable; and

(E) Stating that the COR may be personally liable for unauthorized acts.

[71 FR 69489, Dec. 1, 2006, as amended at 75 FR 22706, Apr. 30, 2010]

201.602-70 Contract clause.

Use the clause at 252.201-7000, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

201.603 Selection, appointment, and termination of appointment.

201.603-2 Selection.

(1) In accordance with 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, a person must—

(i) Have completed all contracting courses required for a contracting officer to serve in the grade in which the employee or member of the armed forces will serve;

(ii) Have at least 2 years experience in a contracting position;

(iii) Have—

(A) Received a baccalaureate degree from an accredited educational institution; and

(B) Completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of high-

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er education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense.

(2) The qualification requirements in paragraph (1)(iii) of this subsection do not apply to a DoD employee or member of the armed forces who—

(i) On or before September 30, 2000, occupied—

(A) A contracting officer position with authority to award or administer contracts above the simplified acquisition threshold; or

(B) A position either as an employee in the GS-1102 occupational series or a member of the armed forces in an occupational specialty similar to the GS-1102 series;

(ii) Is in a contingency contracting force; or

(iii) Is an individual appointed to a 3-year developmental position. Information on developmental opportunities is contained in DoD Instruction 5000.66, Operation of the Defense Acquisition, Technology, and Logistics Workforce Education, Training, and Career Development Program.

(3) Waivers to the requirements in paragraph (1) of this subsection may be authorized. Information on waivers is contained in DoD Instruction 5000.66.

[67 FR 65509, Oct. 25, 2002, as amended at 73 FR 21844, Apr. 23, 2008]

201.603-3 Appointment.

(a) Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

(b) Agency heads may delegate the purchase authority in 213.301 to DoD civilian employees and members of the U.S. Armed Forces.

[56 FR 36284, July 31, 1991, as amended at 64 FR 56705, Oct. 21, 1999]

PART 202—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

Subpart 202.1—Definitions

202.101 Definitions.

Congressional defense committees means—

- (1) The Committee on Armed Services of the Senate;
- (2) The Subcommittee on Defense of the Committee on Appropriations of the Senate;
- (3) The Committee on Armed Services of the House of Representatives; and
- (4) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

Contract administration office also means a contract management office of the Defense Contract Management Agency.

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

DEPARTMENT OF DEFENSE

Counterintelligence Field Activity
 Department of Defense Education Activity
 TRICARE Management Activity
 Washington Headquarters Services, Acquisition and Procurement Office

ARMY

Headquarters, U.S. Army Contracting Command
 Joint Contracting Command—Iraq/Afghanistan
 National Guard Bureau
 Program Executive Office for Simulation, Training, and Instrumentation
 U.S. Army Aviation and Missile Life Cycle Management Command
 U.S. Army Communications-Electronics Life Cycle Management Command
 U.S. Army Corps of Engineers
 U.S. Army Expeditionary Contracting Command
 U.S. Army Intelligence and Security Command
 U.S. Army Joint Munitions and Lethality Life Cycle Management Command
 U.S. Army Medical Command

U.S. Army Medical Research and Materiel Command
 U.S. Army Mission and Installation Contracting Command
 U.S. Army Research, Development, and Engineering Command
 U.S. Army Space and Missile Defense Command
 U.S. Army Sustainment Command
 U.S. Army Tank-Automotive and Armaments Life Cycle Management Command

NAVY

Office of the Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)
 Naval Air Systems Command
 Space and Naval Warfare Systems Command
 Naval Facilities Engineering Command
 Naval Inventory Control Point
 Naval Sea Systems Command
 Naval Supply Systems Command
 Office of Naval Research
 Military Sealift Command
 Strategic Systems Programs
 Marine Corps Systems Command
 Installations and Logistics, Headquarters, U.S. Marine Corps

AIR FORCE

Office of the Assistant Secretary of the Air Force (Acquisition)
 Office of the Deputy Assistant Secretary (Contracting)
 Air Force Materiel Command
 Air Force Reserve Command
 Air Combat Command
 Air Mobility Command
 Air Education and Training Command
 Pacific Air Forces
 United States Air Forces in Europe
 Air Force Space Command
 Air Force District of Washington
 Air Force Operational Test & Evaluation Center
 Air Force Special Operations Command
 United States Air Force Academy
 Aeronautical Systems Center
 Air Armament Center
 Electronic Systems Center
 Space and Missile Systems Center

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

Office of the Deputy Director, Management

DEFENSE BUSINESS TRANSFORMATION AGENCY
 Contracting Office

DEFENSE COMMISSARY AGENCY

Directorate of Contracting

DEFENSE CONTRACT MANAGEMENT AGENCY
 Office of the Director, Defense Contract Management Agency

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DEFENSE FINANCE AND ACCOUNTING SERVICE
External Services, Defense Finance and Accounting Service

DEFENSE INFORMATION SYSTEMS AGENCY
Defense Information Technology Contracting Organization

DEFENSE INTELLIGENCE AGENCY
Office of Procurement

DEFENSE LOGISTICS AGENCY
Acquisition Management Directorate
Defense Supply Centers
Defense Energy Support Center

DEFENSE SECURITY COOPERATION AGENCY
Contracting Division

DEFENSE SECURITY SERVICE
Acquisition and Contracting Branch

DEFENSE THREAT REDUCTION AGENCY
Acquisition Management Office

MISSILE DEFENSE AGENCY
Headquarters, Missile Defense Agency

NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
Procurement and Contracting Office

NATIONAL SECURITY AGENCY
Headquarters, National Security Agency

UNITED STATES SPECIAL OPERATIONS COMMAND
Headquarters, United States Special Operations Command

UNITED STATES TRANSPORTATION COMMAND
Directorate of Acquisition

Contracting officer's representative means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Business Transformation Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Finance and Accounting Service, the Defense Information Systems Agency, the Defense Intelligence

Agency, the Defense Logistics Agency, the Defense Security Cooperation Agency, the Defense Security Service, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, and the National Security Agency.

Department of Defense (DoD), as used in DFARS, means the Department of Defense, the military departments, and the defense agencies.

Executive agency means for DoD, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

General public and non-governmental entities, as used in the definition of *commercial item* at FAR 2.101, do not include the Federal Government or a State, local, or foreign government (Pub. L. 110-181, Section 815(b)).

Head of the agency means, for DoD, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Director of Defense Procurement and Acquisition Policy, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense. (For emergency acquisition flexibilities, see 218.270.)

Procedures, Guidance, and Information (PGI) means a companion resource to the DFARS that—

(1) Contains mandatory internal DoD procedures. The DFARS will direct compliance with mandatory procedures using imperative language such as "Follow the procedures at * * *" or similar directive language;

(2) Contains non-mandatory internal DoD procedures and guidance and supplemental information to be used at the discretion of the contracting officer. The DFARS will point to non-mandatory procedures, guidance, and information using permissive language such

as “The contracting officer may use * * *” or “Additional information is available at * * *” or other similar language;

(3) Is numbered similarly to the DFARS, except that each PGI numerical designation is preceded by the letters “PGI”; and

(4) Is available electronically at <http://www.acq.osd.mil/dpap/dars/index.htm>.

Senior procurement executive means, for DoD—

Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition, Technology, and Logistics);

Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition, Technology, and Logistics).

Tiered evaluation of offers, also known as *cascading evaluation of offers*, means a procedure used in negotiated acquisitions, when market research is inconclusive for justifying limiting competition to small business concerns, whereby the contracting officer—

(1) Solicits and receives offers from both small and other than small business concerns;

(2) Establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

[56 FR 36287, July 31, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting section 202.101, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.
203.070 Reporting of violations and suspected violations.

Subpart 203.1—Safeguards

203.104 Procurement integrity.
203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
203.170 Business practices.
203.171 Senior DoD officials seeking employment with defense contractors.
203.171-1 Scope.
203.171-2 Definition.
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Subpart 203.5—Other Improper Business Practices

203.502-2 Subcontractor kickbacks.
203.570 Prohibition on persons convicted of frauds or other defense-contract-related felonies.
203.570-1 Scope.
203.570-2 Prohibition period.
203.570-3 Contract clause.

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

Subpart 203.9—Whistleblower Protections for Contractor Employees

203.900 Scope of subpart.
203.903 Policy.
203.904 Procedures for filing complaints.
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203.906 Remedies.
203.970 Contract clause.

Subpart 203.10—Contractor Code of Business Ethics and Conduct

203.1003 Requirements.
203.1004 Contract clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36288, July 31, 1991, unless otherwise noted.

§ 203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406-3 or 209.407-3 and DoDD 7050.5, Coordination of

203.104

Remedies for Fraud and Corruption Related to Procurement Activities:

- (a) Certificate of Independent Price Determination (FAR 3.103).
- (b) Procurement integrity (FAR 3.104).
- (c) Gratuities clause (FAR 3.203).
- (d) Antitrust laws (FAR 3.303).
- (e) Covenant Against Contingent Fees (FAR 3.405).
- (f) Anti-kickback Act (FAR 3.502).
- (g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

[69 FR 74990, Dec. 15, 2004]

Subpart 203.1—Safeguards

203.104 Procurement integrity.

203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(d)(3) For purposes of FAR 3.104-4(d)(3) only, DoD follows the notification procedures in FAR 27.404-5(a). However, FAR 27.404-5(a)(1) does not apply to DoD.

[74 FR 2409, Jan. 15, 2009]

203.170 Business practices.

To ensure the separation of functions for oversight, source selection, contract negotiation, and contract award, departments and agencies shall adhere to the following best practice policies:

(a) Senior leaders shall not perform multiple roles in source selection for a major weapon system or major service acquisition. Departments and agencies shall certify every 2 years that no senior leader has performed multiple roles in the acquisition of a major weapon system or major service. Completed certifications shall be forwarded to the Director, Defense Procurement, in accordance with the procedures at PGI 203.170.

(b) Vacant acquisition positions shall be filled on an “acting” basis from below until a permanent appointment is made. To provide promising professionals an opportunity to gain experience by temporarily filling higher positions, these oversight duties shall not be accrued at the top.

(c) Acquisition process reviews of the military departments shall be con-

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ducted to assess and improve acquisition and management processes, roles, and structures. The scope of the reviews should include—

(1) Distribution of acquisition roles and responsibilities among personnel;

(2) Processes for reporting concerns about unusual or inappropriate actions; and

(3) Application of DoD Instruction 5000.2, Operation of the Defense Acquisition System, and the disciplines in the Defense Acquisition Guidebook.

(d) Source selection processes shall be—

(1) Reviewed and approved by cognizant organizations responsible for oversight;

(2) Documented by the head of the contracting activity or at the agency level; and

(3) Periodically reviewed by outside officials independent of that office or agency.

(e) Legal review of documentation of major acquisition system source selection shall be conducted prior to contract award, including the supporting documentation of the source selection evaluation board, source selection advisory council, and source selection authority.

(f) Procurement management reviews shall determine whether clearance threshold authorities are clear and that independent review is provided for acquisitions exceeding the simplified acquisition threshold.

[72 FR 20757, Apr. 26, 2007, as amended at 74 FR 2408, Jan. 15, 2009]

203.171 Senior DoD officials seeking employment with defense contractors.

203.171-1 Scope.

This section implements Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

[74 FR 2409, Jan. 15, 2009]

203.171-2 Definition.

Covered DoD official as used in this section, is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

[74 FR 2409, Jan. 15, 2009]

203.171-3 Policy.

(a) A DoD official covered by the requirements of Section 847 of Public Law 110-181 (a “covered DoD official”) who, within 2 years after leaving DoD service, expects to receive compensation from a DoD contractor, shall, prior to accepting such compensation, request a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to activities that the official may undertake on behalf of a contractor.

(b) A DoD contractor may not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service unless the contractor first determines that the official has received, or has requested at least 30 days prior to receiving compensation from the contractor, the post-employment ethics opinion described in paragraph (a) of this section.

(c) If a DoD contractor knowingly fails to comply with the requirements of the clause at 252.203-7000, administrative and contractual actions may be taken, including cancellation of a procurement, rescission of a contract, or initiation of suspension or debarment proceedings.

[74 FR 2409, Jan. 15, 2009]

203.171-4 Contract clause.

Use the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts.

[74 FR 2409, Jan. 15, 2009]

Subpart 203.5—Other Improper Business Practices

203.502-2 Subcontractor kickbacks.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

- (i) U.S. Army Criminal Investigation Command.
- (ii) Naval Criminal Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

[56 FR 36288, July 31, 1991, as amended at 60 FR 29497, June 5, 1995]

203.570 Prohibition on persons convicted of frauds or other defense-contract-related felonies.

203.570-1 Scope.

This subpart implements 10 U.S.C. 2408. For information on 10 U.S.C. 2408, see PGI 203.570-1.

[71 FR 14100, Mar. 21, 2006]

203.570-2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

(a) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570-2(a); and

(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570-2(b).

[69 FR 74990, Dec. 15, 2004]

203.570-3 Contract clause.

Use the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[64 FR 14398, Mar. 25, 1999. Redesignated at 69 FR 74990, Dec. 15, 2004]

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a

203.900

level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition, Technology, and Logistics).

[56 FR 36288, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995; 65 FR 39704, June 27, 2000]

Subpart 203.9—Whistleblower Protections for Contractor Employees

203.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 as amended by Section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) and Section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

[74 FR 2410, Jan. 15, 2009]

203.903 Policy.

The following policy applies to DoD instead of the policy at FAR 3.903:

(1) 10 U.S.C. 2409 prohibits contractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the following entities, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, a substantial and specific danger to public health or safety, or a violation of law related to a DoD contract (including the competition for or negotiation of a contract):

- (i) A Member of Congress.
- (ii) A representative of a committee of Congress.
- (iii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.
- (iv) The Government Accountability Office.
- (v) A DoD employee responsible for contract oversight or management.
- (vi) An authorized official of an agency or the Department of Justice.

(2) A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section

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shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

[74 FR 2410, Jan. 15, 2009]

203.904 Procedures for filing complaints.

In addition to the procedures at FAR 3.904, any contractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a complaint with the DoD Inspector General.

[74 FR 2410, Jan. 15, 2009]

203.905 Procedures for investigating complaints.

The following procedures apply to DoD instead of the procedures at FAR 3.905:

(1) The DoD Inspector General will make a determination as to whether a complaint is frivolous or merits further investigation.

(2) If the DoD Inspector General determines that a complaint merits further investigation, the DoD Inspector General will—

- (i) Notify the complainant, the contractor alleged to have committed the violation, and the head of the agency;
- (ii) Conduct an investigation; and
- (iii) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the agency.

(3) The DoD Inspector General—

- (i) Will determine that the complaint is frivolous or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

- (ii) If unable to submit a report within 180 days, will submit the report within the additional time period to which the person submitting the complaint agrees.

[74 FR 2410, Jan. 15, 2009]

203.906 Remedies.

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905, the head of the agency—

- (i) Shall determine whether sufficient basis exists to conclude that the

contractor has subjected one of its employees to a reprisal as prohibited by 203.903; and

(ii) Shall issue an order denying relief or shall take one or more of the actions specified in FAR 3.906(a).

(2) If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 203.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) of this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to 10 U.S.C. 2409(c).

[74 FR 2410, Jan. 15, 2009]

203.970 Contract clause.

Use the clause at 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

[74 FR 2410, Jan. 15, 2009]

Subpart 203.10—Contractor Code of Business Ethics and Conduct

203.1003 Requirements.

(b) *Notification of possible contractor violation.* Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office: DoD Inspector General, Investigative Policy and Oversight, Contractor Disclosure Program, 400 Army Navy Drive,

Suite 1037, Arlington, VA 22202-4704; Toll-Free Telephone: 866-429-8011.

[74 FR 53412, October 19, 2009]

203.1004 Contract clauses.

(a) Use the clause at 252.203-7003 in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

(b)(2)(ii) Insert the following address in paragraph (b)(3) of the clause at FAR 52.203-14, Display of Hotline Poster(s): DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Arlington, VA 22202-4704.

[73 FR 46815, Aug. 12, 2008, as amended at 74 FR 53413, October 19, 2009; 75 FR 59101, Sept. 27, 2010]

PART 204—ADMINISTRATIVE MATTERS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36289, July 31, 1991, unless otherwise noted.

Subpart 204.1—Contract Execution

204.101 Contracting officer's signature.

Follow the procedures at PGI 204.101 for signature of contract documents.

[71 FR 9268, Feb. 23, 2006]

Subpart 204.2—Contract Distribution

204.201 Procedures.

Follow the procedures at PGI 204.201 for the distribution of contracts and modifications.

[70 FR 58982, Oct. 11, 2005]

204.203 Taxpayer identification information.

(b) The procedure at FAR 4.203(b) does not apply to contracts that include the clause at FAR 52.204-7, Central Contractor Registration. The payment office obtains the taxpayer identification number and the type of organization from the Central Contractor Registration database.

[68 FR 64558, Nov. 14, 2003]

204.270 Electronic Document Access.

Follow the procedures at PGI 204.270 relating to obtaining an account in the Electronic Document Access system.

[75 FR 59102, Sept. 27, 2010]

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.

DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work products, both classified and unclassified.

[71 FR 9268, Feb. 23, 2006]

204.404 Contract clause.

204.404-70 Additional contract clauses.

(a) Use the clause at 252.204-7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

(b) Use the clause at 252.204-7003, Control of Government Personnel Work Product, in all solicitations and contracts.

(c) Use the clause at 252.204-7005, Oral Attestation of Security Responsibilities, in solicitations and contracts that include the clause at FAR 52.204-2, Security Requirements.

[57 FR 14992, Apr. 23, 1992, as amended at 64 FR 45197, Aug. 19, 1999]

204.470 U.S.-International Atomic Energy Agency Additional Protocol.

204.470-1 General.

Under the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes.

[74 FR 2412, Jan. 15, 2009]

204.470-2 National security exclusion.

(a) The U.S.-IAEA AP permits the United States unilaterally to declare exclusions from inspection requirements for activities, or locations or information associated with such activities, with direct national security significance.

(b) In order to ensure that all relevant activities are reviewed for direct national security significance, both current and former activities, and associated locations or information, are to be considered for applicability for a national security exclusion.

(c) If a DoD program manager receives notification from a contractor that the contractor is required to report any of its activities in accordance with the U.S.-IAEA AP, the program manager will—

(1) Conduct a security assessment to determine if, and by what means, access may be granted to the IAEA; or

(2) Provide written justification to the component or agency treaty office for application of the national security exclusion at that location to exclude access by the IAEA, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America.

[74 FR 2412, Jan. 15, 2009]

204.470-3 Contract clause.

Use the clause at 252.204-7010, Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol, in solicitations and contracts for research and development or major defense acquisition programs involving—

(a) Any fissionable materials (e.g., uranium, plutonium, neptunium, thorium, americium);

(b) Other radiological source materials; or

(c) Technologies directly related to nuclear power production, including nuclear or radiological waste materials.

[74 FR 2412, Jan. 15, 2009]

Subpart 204.6—Contract Reporting

204.602 General.

See PGI 204.602 for additional information on the Federal Procurement Data System (FPDS) and procedures for resolving technical or policy issues relating to FPDS.

[74 FR 37644, July 29, 2009]

204.604 Responsibilities.

(1) The process for reporting contract actions to FPDS should, where possible, be automated by incorporating it into contract writing systems.

(2) Data in FPDS is stored indefinitely and is electronically retrievable. Therefore, the contracting officer may reference the contract action report

204.606

(CAR) approval date in the associated Government contract file instead of including a paper copy of the electronically submitted CAR in the file. Such reference satisfies contract file documentation requirements of FAR 4.803(a).

(3) By December 15th of each year, the chief acquisition officer of each DoD component required to report its contract actions shall submit to the Director, Defense Procurement and Acquisition Policy, its annual certification and data validation results for the preceding fiscal year in accordance with the DoD Data Improvement Plan requirements at <http://www.acq.osd.mil/dpap/pdi/eb>. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated DoD annual certification to the Office of Management and Budget by January 5th of each year.

[74 FR 37644, July 29, 2009]

204.606 Reporting data.

In addition to FAR 4.606, follow the procedures at PGI 204.606 for reporting data to FPDS.

[74 FR 37644, July 29, 2009]

Subpart 204.8—Contract Files

204.802 Contract files.

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) *Authenticated copies* means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) *Conformed copies* means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

204.804 Closeout of contract files.

Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined

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and documented by the procuring contracting officer.

[73 FR 4114, Jan. 24, 2008]

204.805 Disposal of contract files.

(1) The sources of the period for which official contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulatory Council. Forward requests for deviations to both the Government Accountability Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to cost or pricing data (see FAR 15.403-4), for six years. If it is impossible to determine the final payment date in order to measure the six year period, retain the files for nine years.

[56 FR 36289, July 31, 1991, as amended at 62 FR 40472, July 29, 1997; 63 FR 11528, Mar. 9, 1998; 71 FR 53044, Sept. 8, 2006]

Subpart 204.9—Taxpayer Identification Number Information

SOURCE: 64 FR 43099, Aug. 9, 1999, unless otherwise noted.

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204.902 General.

(b) DoD uses the Federal Procurement Data System (FPDS) to meet these reporting requirements.

[74 FR 37645, July 29, 2009]

Subpart 204.11—Central Contractor Registration

SOURCE: 68 FR 64558, Nov. 14, 2003, unless otherwise noted.

204.1103 Procedures.

(1) On contract award documents, use the contractor's legal or "doing business as" name and physical address information as recorded in the Central Contractor Registration (CCR) database at the time of award.

(2) When making a determination to exercise an option, or at any other time before issuing a modification other than a unilateral modification making an administrative change, ensure that—

(i) The contractor's record is active in the CCR database; and

(ii) The contractor's Data Universal Numbering System (DUNS) number, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract document.

(3) At any time, if the DUNS number, CAGE code, contractor name, or physical address on a contract no longer matches the information on the contractor's record in the CCR database, the contracting officer shall process a novation or change-of-name agreement, or an address change, as appropriate.

(4) See PGI 204.1103 for additional requirements relating to use of information in the CCR database.

(5) On contractual documents transmitted to the payment office, provide the CAGE code, instead of the DUNS number or DUNS+4 number, in accordance with agency procedures.

[74 FR 37643, July 29, 2009]

204.1104 Solicitation provision and contract clauses.

When using the clause at FAR 52.204-7, Central Contractor Registration, use

the clause with 252.204-7004, Alternate A.

Subpart 204.12—Annual Representations and Certifications

SOURCE: 73 FR 1823, Jan. 10, 2008, unless otherwise noted.

204.1202 Solicitation provision and contract clause.

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

(1) Use the provision with 252.204-7007, Alternate A, Annual Representations and Certifications; and

(2) Do not include the following representations and certifications:

(i) 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus.

(ii) 252.212-7000, Offeror Representations and Certifications—Commercial Items.

(iii) 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

(iv) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(v) 252.225-7020, Trade Agreements Certificate.

(vi) 252.225-7031, Secondary Arab Boycott of Israel.

(vii) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(viii) 252.225-7042, Authorization to Perform.

(ix) 252.229-7003, Tax Exemptions (Italy).

(x) 252.229-7005, Tax Exemptions (Spain).

(xi) 252.239-7011, Special Construction and Equipment Charges.

(xii) 252.247-7022, Representation of Extent of Transportation by Sea.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.

This subpart—

204.7001

(a) Prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments; and

(b) Does not apply to solicitations or orders for communication service authorizations issued by the Defense Information Technology Contracting Organization of the Defense Information Systems Agency in accordance with 239.7407-2.

[68 FR 64556, Nov. 14, 2003]

204.7001 Policy.

(a) Use the uniform procurement instrument identification (PII) numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument unless the conditions in paragraph (c) of this section exist.

(c)(1) If continued performance under a contract number is not possible or is not in the Government's best interest solely for administrative reasons (*e.g.*, when the supplementary PII serial numbering system is exhausted or for lengthy major systems contracts with multiple options), the contracting officer may assign an additional PII number by issuing a separate continued contract to permit continued contract performance.

(2) A continued contract—

(i) Does not constitute a new procurement;

(ii) Incorporates all prices, terms, and conditions of the predecessor contract effective at the time of issuance of the continued contract;

(iii) Operates as a separate contract independent of the predecessor contract once issued; and

(iv) Shall not evade competition, expand the scope of work, or extend the period of performance beyond that of the predecessor contract.

(3) When issuing a continued contract, the contracting officer shall—

(i) Issue an administrative modification to the predecessor contract to clearly state that—

(A) Any future awards provided for under the terms of the predecessor contract (*e.g.*, issuance of orders or exer-

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cise of options) will be accomplished under the continued contract; and

(B) Supplies and services already acquired under the predecessor contract shall remain solely under that contract for purposes of Government inspection, acceptance, payment, and closeout; and

(ii) Follow the procedures at PGI 204.7001(c).

[71 FR 27640, May 12, 2006]

204.7002 Procedures.

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this subpart; and

(2) Do not use the letter “I” or “O”.

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number, including Federal supply contract numbers and any supplementary numbers, in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, *e.g.*, N00023-90-D-0009 (not necessary in electronic transmission). If there is no space provided on the form, enter the number in the upper right corner of the form and identify what it is (*e.g.*, Supplementary Number N00023-90-F-0120).

[56 FR 36289, July 31, 1991, as amended at 65 FR 14398, Mar. 16, 2000; 68 FR 64556, Nov. 14, 2003]

204.7003 Basic PII number.

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the DoD Activity Address Code (DoDAAC) assigned to the issuing office. DoDAACs can be found at <https://day2k1.daas.dla.mil/daasing/>.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the procurement instrument is issued or awarded.

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(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine—

- (i) Blanket purchase agreements—A
- (ii) Invitations for bids—B
- (iii) Contracts of all types except indefinite delivery contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD. Do not use this code for contracts or agreements with provisions for orders or calls—C
- (iv) Indefinite delivery contracts—D
- (v) Reserved—E
- (vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))—F
- (vii) Basic ordering agreements—G
- (viii) Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, basic ordering agreements, and leases. Do not use this code for contracts or agreements with provisions for orders or calls—H
- (ix) Do not use—I
- (x) Reserved—J
- (xi) Short form research contract—K

- (xii) Lease agreement—L
 - (xiii) Purchase orders—manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M
 - (xiv) Notice of intent to purchase—N
 - (xv) Do not use—O
 - (xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P
 - (xvii) Request for quotation—manual—Q
 - (xviii) Request for proposal—R
 - (xix) Sales contract—S
 - (xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T
 - (xxi) See T—U
 - (xxii) See P—V
 - (xxiii) See M—W
 - (xxiv) Reserved for departmental use—X
 - (xxv) Imprest fund—Y
 - (xxvi) Reserved for departmental use—Z
- (4) *Position 10 through 13.* Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.
- (b) *Illustration of PII number.* The following illustrates a properly configured PII number:

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Position	Contents	N00062	09	C	0001
1-6	Identification of department/agency office				
7-8	Last two digits of the fiscal year in which the procurement instrument is issued or awarded				
9	Type of instrument				
10-13	Four position serial number				

[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27668, May 27, 1994; 60 FR 61592, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996; 62 FR 34121, June 24, 1997; 64 FR 51075, Sept. 21, 1999; 65 FR 14398, Mar. 16, 2000; 65 FR 39704, June 27, 2000; 68 FR 7439, Feb. 14, 2003; 68 FR 64557, Nov. 14, 2003; 69 FR 63327, Nov. 1, 2004; 74 FR 37643, 37646, July 29, 2009]

204.7004 Supplementary PII numbers.

(a) *Uses of the supplementary number.* Use supplementary numbers with the basic PII number, to identify—

- (1) Amendments to solicitations;
- (2) Modifications to contracts and agreements, including provisioned item orders; and
- (3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.

(b) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062-91-R-1234-0001.

(c) *Modifications to contracts and agreements.* (1) Number modifications to contracts and agreements using a six position alpha-numeric added to the basic PII number.

(2) *Position 1.* Identify the office issuing the modification—

- (i) Contract administration office—A

(ii) Contracting office—P

(3) *Positions 2 through 3.* These are the first two digits in a serial number. They may be either alpha or numeric. Use the letters K, L, M, N, P, Q, S, T, U, V, W, X, Y, or Z only in the second position and only in the following circumstances—

(i) Use K, L, M, N, P, and Q in the second position only if the modification is issued by the Air Force and is a provisioned item order.

(ii) Use S, and only S, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

- (A) The contract has either FOB origin or destination delivery terms; and
- (B) The price changes.

(iii) Use T, U, V, W, X, or Y, and only those characters, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

- (A) The contract has FOB origin delivery terms; and
- (B) The price does not change.

(iv) Only use Z in the second position to identify a modification which definitizes a letter contract.

(4) *Positions 4 through 6.* These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (c)(3) of this section. Examples of proper numbering for positions 2-6 (the first position will be either "A" or "P") are as follows:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001-99999	K0001-K9999	S0001-S9999
then	KA001-KZ999	SA001-SZ999
A0001-A9999	L0001-L9999	T0001-T9999
B0001-B9999	LA001-LZ999	TA001-TZ999
and so on to	M0001-M9999	U0001-U9999
H0001-H9999	MA001-MZ999	UA001-UZ999
then	N0001-N9999	V0001-V9999
J0001-J9999	NA001-NZ999	VA001-VZ999
then	P0001-P9999	W0001-W9999
R0001-R9999	PA001-PZ999	WA001-WZ999
then	Q0001-Q9999	X0001-X9999
AA001-AZ999	QA001-QZ999	XA001-XZ999
then		Y0001-Y9999
JA001-JZ999		YA001-YZ999
RA001-RZ999		

(5) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(6) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* (1) Calls or orders issued by the office issuing the contract or agreement. Use a four position alpha-numeric call or order serial number added to the basic PII number. These shall be identified by using serial numbers beginning 0001 through 9999. When the numeric identifiers run out, use alpha characters in the third and fourth positions. Never use alpha characters in the first and second positions.

(2) Orders placed against another activity's contract or agreement.

(i) If the office placing the order or call is different from the office identified in the basic PII number, assign a serial number to the order or call. The first and second positions contain the call/order code assigned to the ordering office in accordance with 204.7005. Do not use the letters A or P in the first position. The third and fourth positions are a two position serial number assigned by the ordering office. The series will begin with 01. When the numbers exceed 99, the office will assign a uniform series of identifiers containing alpha and/or numeric characters, e.g., Basic #: N00383-91-D-0001 serial #: TU01.

(ii) If an office is placing calls or orders with NIB, NISH, or UNICOR, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section, e.g., Order #: DLA100-91-F-0001 modification #: A00001.

(e) *Modifications to calls or orders.* Use a two position alpha-numeric suffix, known as a call or order modification indicator, to identify a modification to a call or order.

(1) Modifications to a call or order issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications to a call or order issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

[64 FR 43099, Aug. 9, 1999, as amended at 68 FR 64557, Nov. 14, 2003]

204.7005 Assignment of order codes.

(a) The Defense Logistics Agency, Acquisition Policy Branch (J71), Fort Belvoir, VA 22060-6221, is the executive agent for maintenance of code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (see 204.7004(d)(2)). The executive agent distributes blocks of two-character order codes to department/agency monitors for further assignment.

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(b) Contracting activities submit requests for assignment of or changes in two-character order codes to their respective monitors in accordance with department/agency procedures. Order code monitors—

(1) Approve requests for additions, deletions, or changes; and

(2) Provide notification of additions, deletions, or changes to—

(i) The executive agent; and

(ii) The executive editor, Defense Acquisition Regulations, OUSD(AT&L)DPAP(DAR), 3062 Defense Pentagon, Washington, DC 20301-3062.

(c) Order code monitors are—

Army: Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201

Navy and Marine Corps: Office of the Assistant Secretary of the Navy (RD&A), 1000 Navy Pentagon, Room BF992, Washington, DC 20350-1000

Air Force: SAF/AQCI, 1060 Air Force Pentagon, Washington, DC 20330-1060

Defense Logistics Agency: Defense Logistics Agency, Acquisition Policy Branch (J-3311), John J. Kingman Road, Fort Belvoir, VA 22060-6221

Other Defense Agencies: Army Contracting Agency, Attn: SFCA-IT 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201

(d) Order code assignments can be found at http://www.acq.osd.mil/dpap/dars/order_code_assignments.html

[68 FR 64557, Nov. 14, 2003, as amended at 69 FR 63327, Nov. 1, 2004; 72 FR 42313, Aug. 2, 2007; 73 FR 4113, Jan. 24, 2008; 73 FR 27464, May 13, 2008]

204.7006 Cross reference to Federal Procurement Data System.

Detailed guidance on mapping PII and supplementary PII numbers stored in the Electronic Document Access system to data elements reported in the Federal Procurement Data System can be found in PGI 204.7006.

[75 FR 59102, Sept. 27, 2010]

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

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204.7101 Definitions.

Accounting classification reference number (ACRN) means any combination of a two position alpha/numeric code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

Attachment means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

Definitized item, as used in this subpart, means an item for which a firm price has been established in the basic contract or by modification.

Exhibit means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

Nonseverable deliverable, as used in this subpart, means a deliverable item that is a single end product or undertaking, entire in nature, that cannot be feasibly subdivided into discrete elements or phases without losing its identity.

Undefinitized item, as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995; 70 FR 58982, Oct. 11, 2005]

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

(1) Solicitations;

(2) Solicitation line and subline item numbers;

(3) Contracts as defined in FAR Subpart 2.1;

(4) Contract line and subline item numbers;

(5) Exhibits;

(6) Exhibit line and subline items; and

(7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

(1) The contract is an indefinite-delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(2) The contract is a communications service authorization issued by the Defense Information Systems Agency's Defense Information Technology Contracting Organization.

[71 FR 9269, Feb. 23, 2006]

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all four of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price.* The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an

attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10-99 @ \$1.00, 100-249 @ \$.98, 250+ @ \$.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104. Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule.* Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated ("as required" constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(4) *Single accounting classification citation.* (i) Each contract line item shall reference a single accounting classification citation except as provided in paragraph (a)(4)(ii) of this subsection.

(ii) The use of multiple accounting classification citations for a contract line item is authorized in the following situations:

(A) A single, nonseverable deliverable to be paid for with R&D or other funds properly incrementally obligated over several fiscal years in accordance with DoD policy;

(B) A single, nonseverable deliverable to be paid for with different authorizations or appropriations, such as in the acquisition of a satellite or the modification of production tooling used to produce items being acquired by several activities; or

(C) A modification to an existing contract line item for a nonseverable deliverable that results in the delivery of a modified item(s) where the item(s) and modification are to be paid for with different accounting classification citations.

(iii) When the use of multiple accounting classification citations is authorized for a single contract line item, establish informational subline items for each accounting classification citation in accordance with 204.7104-1(a).

(b) All subline items and exhibit line items under one contract line item shall be the same contract type as the contract line item.

(c) For a contract that contains a combination of fixed-price line items, time-and-materials/labor-hour line items, and/or cost-reimbursement line items, identify the contract type for each contract line item in Section B, Supplies or Services and Prices/Costs, to facilitate appropriate payment.

(d) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105(a).

(e) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture

of items, a single line item or subline item may be used for the lot.

(f) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate line items must conform to the requirements of paragraph (a) of this subsection.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995; 60 FR 43191, Aug. 18, 1995; 70 FR 58982, Oct. 11, 2005]

204.7103-2 Numbering procedures.

Follow the procedures at PGI 204.7103-2 for numbering contract line items.

[70 FR 58983, Oct. 11, 2005]

204.7104 Contract subline items.

204.7104-1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which consist of more than one item that requires separate identification.

(a) *Informational subline items.* (1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the

item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(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)).

(b) *Separately identified subline items.*

(1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items shall be used when items bought under one contract line item number—

(i) Are to be paid for from more than one accounting classification. A subline item shall be established for the quantity associated with the single accounting classification citation. Establish a line item rather than a subline item if it is likely that a subline item may be assigned additional accounting classification citations at a later date. Identify the funding as described in 204.7104-1(a)(3);

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103-1(a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3) (i) and (ii) of this subsection shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another subline item or contract line item, it may be necessary to withhold payment on the priced subline item until all the related subline items that are not separately priced have been delivered. In those cases, use the clause at 252.204-7002, Payment for Subline Items Not Separately Priced.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995; 68 FR 75200, Dec. 30, 2003]

204.7104-2 Numbering procedures.

Follow the procedures at PGI 204.7104-2 for numbering contract subline items.

[70 FR 58983, Oct. 11, 2005]

204.7105 Contract exhibits and attachments.

Follow the procedures at PGI 204.7105 for use and numbering of contract exhibits and attachments.

[71 FR 9269, Feb. 23, 2006]

204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103, 204.7104, and 204.7105.

(b) Modifications to existing contract line items or exhibit line items. (1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items.*

(A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract or exhibit line item or subline item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items.* In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract or exhibit line item or subline item may be used if the unit price for the new quantity is

expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract or exhibit line or subline item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. Assign the changed portion the next available number.

(3) If the modification will decrease the amount obligated—

(i) There shall be coordination between the administrative and procuring contracting offices before issuance of the modification; and

(ii) The contracting officer shall not issue the modification unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

[56 FR 36289, July 31, 1991, as amended at 70 FR 58983, Oct. 11, 2005]

204.7107 Contract accounting classification reference number (ACRN) and agency accounting identifier (AAI).

Traceability of funds from accounting systems to contract actions is accomplished using ACRNs and AAIs. Follow the procedures at PGI 204.7107 for use of ACRNs and AAIs.

[74 FR 52895, Oct. 15, 2009]

204.7108 Payment instructions.

Follow the procedures at PGI 204.7108 for inclusion of payment instructions in contracts.

[70 FR 58983, Oct. 11, 2005]

204.7109 Contract clause.

Use the clause at 252.204-7006, Billing Instructions, in solicitations and contracts if Section G includes—

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

(b) 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.

[70 FR 58983, Oct. 11, 2005]

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to—

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purpose of developing computerized acquisition systems or solicitation mailing lists.

[64 FR 43099, Aug. 9, 1999]

204.7201 Definitions.

(a) *Commercial and Government Entity (CAGE) code* means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

(b) *Contractor identification code* means a code that the contracting office uses to identify an offeror. The three types of contractor identification

codes are CAGE codes, Data Universal Numbering System (DUNS) numbers, and Taxpayer Identification Numbers (TINs).

[64 FR 43099, Aug. 9, 1999]

204.7202 General.

204.7202-1 CAGE codes.

(a) DLIS assigns or records and maintains CAGE codes to identify commercial and Government entities. DoD 4000.25-5-M, Military Standard Contract Administration Procedures (MLSCAP), and Volume 7 of DoD 4100.39-M, Federal Logistics Information System (FLIS) Procedures Manual, prescribe use of CAGE codes.

(b)(1) If a prospective contractor located in the United States must register in the Central Contractor Registration (CCR) database (see FAR Subpart 4.11) and does not have a CAGE code, DLIS will assign a CAGE code when the prospective contractor submits its request for registration in the CCR database. Foreign registrants must obtain a North Atlantic Treaty Organization CAGE (NCAGE) code in order to register in the CCR database. NCAGE codes may be obtained from the Codification Bureau in the foreign registrant’s country. Additional information on obtaining NCAGE codes is available at http://www.dlis.dla.mil/Forms/Form_AC135.asp.

(2) If registration in the CCR database is not required, the prospective contractor’s CAGE code is not already available in the contracting office, and the prospective contractor does not respond to the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures:

(i) To identify the prospective contractor’s CAGE code, use—

(A) The monthly H-series CD ROM that contains the H-4/H-8 CAGE master file issued by DLIS (Their address is: Customer Service, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017-3084. Their telephone number is: toll-free 1-888-352-9333);

(B) The on-line access to the CAGE file through the Defense Logistics Information System;

(C) The on-line access to the Defense Logistics Agency (DLA) CAGE file

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through the DLA Network or dial-up capability; or

(D) The Internet to access the CAGE Lookup Server at *http://www.dlis.dla.mil/cage_welcome.asp*.

(ii) If no CAGE code is identified through use of the procedures in paragraph (b)(2)(i) of this subsection, ask DLIS to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, (or electronic equivalent) to the address in paragraph (b)(2)(i)(A) of this subsection, ATTN: DLIS-SBB. The contracting office completes Section A of the DD Form 2051, and the contractor completes Section B. The contracting office must verify Section B before submitting the form.

(c) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLIS Customer Service: toll-free (888) 227-2423 or (888) 352-9333; DSN 932-4725; or commercial (616) 961-4725.

[64 FR 43100, Aug. 9, 1999, as amended at 65 FR 63804, Oct. 25, 2000; 67 FR 49252, July 30, 2002; 68 FR 15380, Mar. 31, 2003; 68 FR 64558, Nov. 14, 2003]

204.7202-2 DUNS numbers.

Requirements for use of DUNS numbers are in FAR 4.605(b) and 4.607(a).

[74 FR 34265, July 15, 2009]

204.7202-3 TINs.

Requirements for use of TINs are in FAR subpart 4.9.

[64 FR 43100, Aug. 9, 1999]

204.7203 Responsibilities of contracting officers.

(a) Assist offerors in obtaining the required CAGE codes.

(b) Do not deny a potential offeror a solicitation package because the offeror does not have a contractor identification code.

[64 FR 43100, Aug. 9, 1999, as amended at 74 FR 37645, July 29, 2009]

204.7204 Maintenance of the CAGE file.

(a) DLIS will accept written requests for changes to CAGE files, other than name changes, from the following entities:

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(1) The entity identified by the code. The entity must use company letterhead to forward the request.

(2) The contracting office.

(3) The contract administration office.

(b) Submit requests for changes to CAGE files on DD Form 2051, or electronic equivalent, to—Defense Logistics Information Service, DLIS-SBB, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017-3084. Telephone Numbers: toll-free (888) 352-9333, DSN 932-4725, commercial (616) 961-4725. Facsimile: (616) 961-4388, 4485.

(c) The contracting officer responsible for execution of a change-of-name agreement (see FAR subpart 42.12) must submit the agreement to DLIS-SBB. If there are no current contracts, each contracting and contract administration office receiving notification of changes from the commercial entity must forward a copy of the change notice annotated with the CAGE code to DLIS-SBB unless the change notice indicates that DLIS-SBB already has been notified.

(d) Additional guidance for maintaining CAGE codes is in Volume 7 of DoD 4100.39-M, Federal Logistics Information System (FLIS) Procedures Manual.

[64 FR 43100, Aug. 9, 1999; 64 FR 46474, Aug. 25, 1999, as amended at 65 FR 63804, Oct. 25, 2000]

204.7205 Novation agreements, mergers and sales of assets.

Contracting officers shall process and execute novation agreements in accordance with FAR Subpart 42.12, Novation and Change-of-Name Agreements. These actions are independent of code and name assignments made as a result of the occasion which created the need for the novation agreement. The maintenance activity will determine which entity(s) will retain the existing code(s) and which entities will be assigned new codes. The contracting officer responsible for processing the novation agreement shall provide the maintenance activity with the following information:

(a) Name(s), address(es), and code(s) of the contractor(s) transferring the original contractual rights and obligations (transferor).

(b) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferee).

(c) Name(s), address(es), and code(s) (if any) of the entity who is retaining or receiving the rights to the technical data.

(d) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

[56 FR 36289, July 31, 1991, as amended at 66 FR 49861, Oct. 1, 2001]

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes for identification and processing purposes.

(a) A single CAGE code will be assigned to the agent/broker establishment in addition to any codes assigned to the entities represented by the agent/broker, i.e., only one code will be assigned to a specific agent/broker entity regardless of the number of firms represented by that agent/broker.

(b) Additional codes may be assigned to an agent/broker if they meet the criteria for assigning additional codes for entities, e.g., different location.

(c) Codes will not be assigned to an agent/broker in care of the entity being represented or in any way infer that the agent/broker is a separate establishment bearing the name of the entity represented by the agent/broker.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51032, Sept. 30, 1996; 62 FR 48182, Sept. 15, 1997]

204.7207 Solicitation provision.

Use the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when—

(a) The solicitation does not include the clause at FAR 52.204-7, Central Contractor Registration; and

(b) The CAGE codes for the potential offerors are not available to the contracting office.

[66 FR 47097, Sept. 11, 2001, as amended at 68 FR 64558, Nov. 14, 2003]

Subpart 204.73—Export-Controlled Items

SOURCE: 75 FR 18034, Apr. 8, 2010, unless otherwise noted.

204.7300 Scope of subpart.

This subpart implements section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

204.7301 Definitions.

Export-controlled items, as used in this subpart, is defined in the clause at 252.204-7008.

204.7302 General.

Certain types of items are subject to export controls in accordance with the Arms Export Control Act (22 U.S.C. 2751, *et seq.*), the International Traffic in Arms Regulations (22 CFR parts 120-130), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*), and the Export Administration Regulations (15 CFR parts 730-774). See *PGI 204.7302* for additional information.

204.7303 Policy.

(a) It is in the interest of both the Government and the contractor to be aware of export controls as they apply to the performance of DoD contracts.

(b) It is the contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established or limited by, this subpart.

204.7304 Contract clauses.

Use the clause at 252.204-7008, Export-Controlled Items, in all solicitations and contracts.