

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

2111 Wilson Boulevard, Suite 400
Arlington, VA 22201
www.codsia.org
(703) 247-9490

August 1, 2002
CODSIA Case 5-02

Defense Acquisition Regulations Council
Attn: Ms. Sandra Haberlin
OUSD (AT&L)/DP(DAR)
IMD 3C132
3062 Defense Pentagon
Washington, D.C. 20301-3062

Re: DFARS Case 2002-D-001
Electronic Submission and Processing of Payment Requests

Dear Ms. Haberlin:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) are pleased to provide these comments on the proposed DFARS rule on electronic submission and processing of payment requests published in the May 31, 2002 Federal Register (67 FR 30857). The rule is designed to implement Section 1008 of the National Defense Authorization Act of 2001 (P.L. 106-398). Section 1008(a) of such Act is codified at 10 U.S.C. 2227. We appreciate the sixty-day comment period on the rule.

Formed in 1964 by industry associations with common interests in defense and space fields, CODSIA is currently comprised of seven associations representing over 4000 member companies across the nation. Participation in CODSIA projects is strictly voluntary; a decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

A. General

As a general matter, we believe there will be a great deal of difficulty for DoD contractors, particularly small business, to comply with this rule, even with sufficient notice of the requirements and their best efforts. Based on the Department's own notice to Congress, published in the August 21, 2001 Federal Register, it is clear that the Department will also have difficulty in complying with the statutory requirements, despite its best efforts to do so.

While progress has been made, the Department has not yet put into place fully functional electronic commerce systems that interface with all Department payment systems for all invoice types to enable agency personnel and contractors to comply. For example, the Department's Wide-Area Work Flow (WAWF) system will not currently accept the electronic submission of the invoice types listed below:

- Performance Based Payment
- Commercial Financing Requests
- Invoices containing withholds
- Corrected invoices
- Credit invoices
- Classified invoices

In addition, there are a number of low volume invoice types (e.g., alternate liquidation rate billing adjustments, short payment refund requests, retroactive contract price change billings, etc.) for which cost effective electronic commerce solutions may never be available. We believe each of these categories meet the elements of, and are appropriate candidates for application of, the waiver authority under 10 U.S.C. 2227(c). We recommend that these “cases” be specifically enumerated in the Subpart 232.7002(a)(6).

Furthermore, until these and other systems access and performance issues are resolved, it is impossible for the Department or the contractor community to fully comply with the proposed DFARS 232.7002 electronic payment requirements. We recommend that the Department acknowledge the implementation challenges and address enforcement accordingly. Initially, broad waiver policies should be issued, including requiring clear documentation as part of the contract file without the need for higher-level approvals. We also recommend that the Department establish reasonable and flexible grace periods to enable contractors to convert from paper invoice to electronic submissions as either new Department payment systems or invoice types are incorporated into the Department’s WAWF System or other electronic systems. This flexibility should also specifically include permitting a contractor to use only one payment request system for all of its covered contracts.

Consistent with the Department’s financial management modernization plan, we recognize that as DoD plans to migrate to a centralized electronic commerce system, it must also integrate existing electronic commerce submissions to this centralized system. We strongly recommend that DoD describe the interface(s) it will use to accommodate existing contractor systems and quickly publish a detailed implementation schedule for each invoice type, electronic solution, and DoD payment office.

Further, the benefits of DoD’s successful “Direct Submittal” initiative need to be retained. If invoices must be routed through WAWF rather than directly to the Payment Systems, WAWF functionality should enable “Direct Submittal” approved contracts to route automatically through to the payment office without any DMCA or DCAA manual intervention. To facilitate the electronic payment of invoice requests, government payment practices should be evaluated and clear DMCA, DCAA and DFAS guidance issued to eliminate, wherever possible, invoice backup documentation and ACO approvals.

B. New DFARS Part 232.70

With respect to the specific elements of the proposed new Part 232.70 of the rule, we have the following recommendations.

1. In new part 232.7002(a)(6), as noted earlier, we recommend that each of the identified invoice types listed above be specifically enumerated into this paragraph.
2. Since the Department has flexibility and broad waiver authority under the statute for determining the implementation procedures for the electronic submission of DD250 receiving reports and other supporting documentation, we strongly urge the exclusion of the DD250 receiving reports from initial coverage under 232.7002(b). The development of an electronic solution for the processing of DD 250 receiving reports presents significantly more problems than a solution for the electronic submission of an invoice because of the number of data fields currently on the DD250 form and the connectivity and training problems associated with obtaining recipient approvals. The current WAWF system utilized for DD250 processing has many limitations that prevent contractors from submitting all receiving reports electronically. We believe it will be more cost effective at the outset to allocate scarce resources to comply first with the statutory requirement for electronic submission of invoices and then to focus on developing an electronic solution for processing the DD250 receiving reports and other supporting documentation.
3. In new part 232.7002(a), we recommend the addition of a new paragraph (7) to exempt from the inclusion of the clause those situations where the contracting officer either knows in advance of the release of the solicitation that, by the time of contract award, contractors are unable to submit, or the government is unable to receive, either payment requests using any of the electronic forms or that there are invoice types for which no cost effective electronic solution is available.

As noted above, there are numerous instances where the government's internal systems are incapable of receiving and/or processing payments electronically and these should be exempt at the outset of the procurement; future solicitations may provide future opportunities for coverage.

4. In new part 232.7002, we recommend that a new paragraph (c) be added to make it clear that while submissions using electronic forms are required, the contracting officer and the contractor may authorize any individual payment request (or group of payment requests) otherwise required to use electronic forms to be submitted using other than electronic forms without constituting a violation of paragraphs (b) or (d) of the 7xxx clause.
5. In new part 232.7003(a), we recommend the inclusion of a provision (identical to the provision in subparagraph (a)(4) of the 7xxx clause) that permits the contracting officer to authorize the use of another electronic form. This authority is particularly critical during the solicitation stage of a procurement, but if used in the solicitation, the contracting officer must disclose in the appropriate place in the solicitation the alternatives to the forms designated under clause (a)(1) through (a)(3). Paragraph 7003(b) is insufficient because it only operates after contract award. The proposed 7xxx clause already includes such an alternative as paragraph (b)(4).
6. In new part 232.7004, we recommend adding a clarification that the clause is only to be used in solicitations and contracts resulting from solicitations first issued after October 1, 2002. This matter is further described below in the discussion of the effective date of the DFARS rule.

7. In new part 232.7004(b)(2), we recommend substituting the word “Government” for the word “DoD” to be more accurate in assessing capabilities and to be consistent with the use of the phrase in subsection (c) of the clause.

C. New DFARS Clause 252.212-7xxx

With respect to the specific elements of the proposed Part 252.212-7xxx “Electronic Submission of Payment Requests” clause, we have the following recommendations.

1. In subsection (a)(3), we recommend inserting before the period a comma and the phrase “except as provided in 232.7002”. The purpose for including the repetition of the exceptions is to recognize that even though the basic contract payment requests are subject to the standard requirements for using electronic formats, there may be certain specific transactions permitted under the contract where electronic payments would not be feasible or desirable. Section 232.7004 only determines when to use the -7xxx clause in a contract, not what payment requests are required to use electronic methods.
2. We support the inclusion of clause (a)(4) that permits the contracting officer to authorize the use of another electronic form beyond the three already designated. This authority is particularly critical in the solicitation stage of a procurement, but if used there, the contracting officer must disclose in the appropriate place in the solicitation the alternatives to the forms designated under clause (b)(1) through (b)(3). This flexibility must be retained in the final rule.

D. Effective Date of the Final Rule

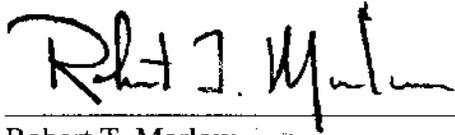
Section 1008(c) of the statute is explicit that it applies only to new contracts for which solicitations are first issued after October 1, 2002 (the “no later than” date provided for under the Act and included in the Department’s August 21, 2001 Federal Register notice (66 FR 43841)). The effective date must be explicit in the final rule. Furthermore, with just over sixty days before the law takes effect, we urge the Department to move expeditiously to adopt our recommendations and issue a final rule.

Simultaneously, as DoD finalizes its policies and procedures, we also recommend training information and other assistance be made available, particularly to small business, to assist in complying with the final rule. It would also be beneficial for DoD to schedule public meetings to discuss the important implementation actions required of both DoD activities and contractors. CODSIA member associations would be pleased to assist the Department in scheduling these sessions.

We are aware of the work undertaken by the Defense Electronic Business Program Office and the May 2002 publication entitled “Introduction to Electronic Commerce with the Department of Defense: A Handbook for Business.” While this handbook is an excellent primer for business, it does not provide sufficient information to assist government officials or contractors to comply with the statute or the rule.

We appreciate the opportunity to respond to this proposed rule. If there are any questions, or if we can be of assistance, please contact Alan Chvotkin, the CODSIA project officer for this case, at (703) 875-8059 or by e-mail at Chvotkin@pscouncil.org.

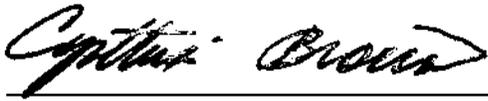
Sincerely,



Robert T. Marlow
Vice President, Government Division
Aerospace Industries Association



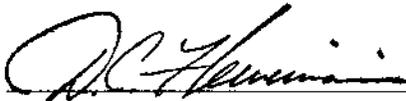
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American Electronics Association



Cynthia Brown
President
American Shipbuilding Association



Gary D. Engebretson
President
Contract Services Association



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President, GEIA
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USAF (Ret.)
President & CEO
National Defense Industrial
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Alan Chvotkin
Senior Vice President
Professional Services Council