



March 5, 2004

Defense Acquisition Regulations Council
Attn: Mr. Steven Cohen
OUSD (AT&L)DPAP(DAR)
IMD 3C132, 3062 Defense Pentagon
Washington, DC 20301-3062

Dear Mr. Cohen:

The Aerospace Industries Association appreciates the opportunity to provide comments on the Interim Rule on Unique Item and Identification (DFARS Case 2003-D081). We would like to thank the Department for engaging in a collaborative effort to shape the requirements of this very important initiative.

While much remains to be done, particularly in the area of government furnished property prior to January 1, 2005, we are hopeful that the meeting on March 23-24, 2004, will lead to the adoption of business rules and related guidance that will make the transition in 2005 a successful one.

We note that there is one area that has not been specifically addressed in official correspondence and that is how to handle classified or COMSEC contracts and marking and valuing their deliverables. May we suggest that the DFARS final rule include instructions to require that all such issues be directed to the Contracting Officer for resolution. There may be a need to make a case-by-case determination with regard to marking and valuation that only the Contracting Officer may be in a position to address.

In our letter of February 27, 2004 to the Director of Defense Procurement, we expressed our concern that not all UID implementation costs may be recovered under existing accounting procedures. We encourage the Department to give early consideration to addressing this issue. We stand ready to meet with your representatives at your convenience.

Our comments on the interim rule are attached.

If there are any questions or if we can be of further assistance please contact the undersigned at &703) 358-1045 or sullivan@aia-aerospace.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick D. Sullivan', is written over a white background.

Patrick D. Sullivan
Assistant Vice President
Procurement and Finance

Attachment

AEROSPACE INDUSTRIES ASSOCIATION COMMENTS ON UID INTERIM RULE

Specific

1. In section 211.274-2 (b) (2) Government's unit acquisition cost, for cost type line, subline, or exhibit line items, is the contractor's estimated fully burdened unit cost. In informal discussions with the Department's staff, we understand that this is intended to include a representative element of profit or fee. We suggest that this be clarified in the list of Frequently Asked Questions or in the Guide to Uniquely Identifying Items.
2. Section 211.274-3 Contract Clause. This section has been improved for both industry and the government. It addresses "items" requiring UID and clarifies application where a CDRL/Exhibit is required for subassemblies, components, or embedded items. To strengthen this principle, we recommend that several illustrative examples be included in the DOD Guide to Uniquely Identified Items.
3. Section 243.171. The change to this section affects the obligation or deobligation of funds and deletes the requirement for contract modifications whenever a change in the value of the acquisition cost of delivered items changes. This is an improvement that addressed the "materiality" issue of cost changes. This is a significant benefit for both the government and industry by reducing the administrative burden of contract modifications.
4. In the clause 252.7003 (c) (1) (iii) there are requirements regarding subassemblies, components and parts embedded within items specified in Exhibits or CDRLs. It should be noted that not all embedded items fit the category of subassemblies, components or parts. As a hypothetical example, a latch that is permanently attached to a watertight door may be purchased but is not carried as a spare part, subassembly or component. Once attached, it is embedded as a permanent part of the door and not replaceable. There needs to be clarification that such hardware is not to be subject to the requirements for assignment of a UID and the clause need not be flowed down to the supplier.
5. In the clause 252.211-7003 (c) (3) Data syntax and semantics, the enterprise responsible for assigning the UID should determine the type of data qualifiers to use instead of this information being specified on a contract-by-contract basis. Recommend the following change to the wording:

"The Contractor shall--

- (i) Mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers, as specified elsewhere in the contract:"

Comment: As written it is conceivable a subcontractor producing a common subassembly for use in three unique weapon systems (i.e. E2C, F-35, and F18) may be required to use a different type data qualifier depending on the end item application or service agency buying the item.

6. The definition in clause 252.211-7003 (a) of "Government's unit acquisition cost" is a major improvement for both industry and government.

General Comments on Implementation of Unique Identification Requirements

- Mandatory UID marking by commercial suppliers is inconsistent with FAR Part 12, Acquisition of Commercial Items, and needs to be more flexible in its requirements.

DOD stated in the revised interim rule:

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

We strongly believe that there should be more flexible UID policy on FAR Part 12 commercial contracts. Ever since FAR Part 12 was enacted to provide the federal government the capability to buy commercial items on standard commercial terms and conditions, there has been "requirements creep" adding mandatory clauses to these types of contracts. Adding a rigid mandatory UID requirement will be another step toward rendering FAR Part 12 unusable at either the prime or subcontract level. We believe that the UID policy for FAR Part 12 should contain the following:

"Use the commercial-unique identifier that may already exist for DOD purposes; or request the supplier to add it, if possible, but not as a mandatory requirement; or have the receiving company or government entity mark the deliverable item upon receipt and inspection."

- Issue appropriate contract guidance regarding compliance.

We are aware that DoD has expressly rejected the possibility of issuing contract waivers in the referenced interim rule. DoD stated in the revised interim rule:

"Several comments were made with regard to the possibility of waivers from or exceptions to the new requirement. DoD Response: The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. No waivers or exceptions can be granted."

We believe that DOD should issue instructions to all of its organizations that failure to comply with the DFARS UID requirement in the first contract upon which it is imposed shall not be reason for refusing delivery or assessing withholds, provided the company has a plan in place for compliance and is proceeding in accordance with this plan. For example, we understand June 2004 is the earliest that Wide Area Workflow (WAWF) will be modified to accept DD 250 transactions which include required UID data, and then only for fixed price contracts. Current contracts should not be rigidly enforced when the system for accepting the data for all contracts is not yet available to all suppliers.

- Defer UID marking of Special Tooling (ST) and Special Test Equipment (STE) until January 1, 2005.

We believe that ST and STE and other items of government property, created and used during the course of contracts during 2004, should be exempt from any UID marking or valuation requirements until such items are delivered to the government, or one of its suppliers, on or after January 1, 2005. Policy and procedures for this class of assets should be published as soon as possible.

- The Government should implement special training addressing the new UID requirements for small, and small disadvantaged businesses, minority- or women-owned firms.

We are aware that DoD has expressly stated in the referenced interim rule:

“B. Regulatory Flexibility Act -- This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

We feel that DOD should give special consideration to communicating, aiding, and making available, training to all suppliers that will need to comply with this requirement - whether as prime contractors, or as subcontractors at any tier. This is especially true for small and small disadvantaged, minority- or women-owned firms. Both government buying offices and prime contractors should be encouraged to make special efforts to assist these firms and make accommodations as needed to help them achieve the goals of this new requirement.

- The DOD UID policy should be coordinated and consistent with all other aspects of DOD acquisition policy.

DoD should assure that, as this and the RFID policies evolve, care is taken to reconcile the RFID and UID policies, DFARS rule, MIL STD's, solicitation instructions, training and other aspects to assure uniform interpretation and avoid missteps on the part of government or industry.

- Individual program offices should have the flexibility to designate which parts should be marked -- but not dictate the process and procedure for actual marking of parts

Individual program offices should be encouraged to work with their contractors to identify what parts are to be marked, but a program office should not normally tell a contractor what marking construct to use since the contractor's plant - and its supply chain - may already be keyed to use of a certain approach, and may incur considerable cost and disruption to alter that for a single contract.