

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
Approval of the Speed Limits Local Initiative Measure in the DFW nine county area. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall.	Dallas-Fort Worth	4/25/2000	10/11/2005	[Insert FR page number where document begins].

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DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 252, and Appendix F to Chapter 2

[DFARS Case 2003-D009]

Defense Federal Acquisition Regulation Supplement; Payment and Billing Instructions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to improve payment and billing instructions in DoD contracts. This final rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Effective October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0293; facsimile (703) 602-0350. Please cite DFARS Case 2003-D009.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and 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.

Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Deletion of text at DFARS 204.201, 204.202, 204.7103-2, 204.7104-2, 204.7107, and 204.7108 addressing distribution of contracts and modifications; numbering of contract line items, subline items, and accounting classification references; and inclusion of payment instructions in contracts. Text on these subjects has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>. In addition, the related PGI text contains a menu of standard payment instructions from which the contracting officer will make a selection for inclusion in Section G of the contract.

- Clarification of the definition of “accounting classification reference number” at DFARS 204.7101.

- Amendment of DFARS 204.7103-1 to add text addressing contract type in the establishment of contract line items.

- Amendment of DFARS 204.7106 to clarify that contract modifications decreasing the amount obligated shall not be issued unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

- Addition of a clause addressing contract line item information needed in contractor payment requests.

- Amendment of Material Inspection and Receiving Report instructions to address electronic submissions.

DoD published a proposed rule at 69 FR 35564 on June 25, 2004. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below:

1. *Comment:* The proposed text at DFARS 204.7103-1 should include labor-hour and/or time-and-materials line items.

DoD Response: Concur. DFARS 204.7103-1 has been expanded to include time-and-materials/labor-hour line items to ensure that proper payment is applied to each line item. Since a time-and-materials/labor-hour contract contains some elements of a fixed-price contract and some elements of a cost-reimbursement contract, specifying time-and-materials/labor-hour line items will avoid potential confusion as to whether these are classified as fixed-price or cost-reimbursement.

2. *Comment:* The proposed text at DFARS 204.7103-1 conflicts with the current text at DFARS 215.204-2(g). Recommend that the text at 215.204-2(g) be deleted or revised to be consistent with the proposed text at 204.7103-1.

DoD Response: Concur. The final rule deletes the text at DFARS 215.204-2(g).

3. *Comment:* Delete the proposed text at DFARS 204.7106(b)(3)(i) and (ii) concerning modification coordination and funding, because they are supplementing the wrong part. Per DFARS 204.7100, the scope of this subpart is to prescribe policies and procedures for assigning contract line item numbers. Further, it is recommended that the language not be included at all in the DFARS, because the text proposed at DFARS 204.7106(b)(3)(i) increases the administrative burden on contracting officers by imposing coordination between the administrative contracting officer (ACO) and the procuring contracting officer (PCO) regardless of the authority already granted in the regulations (FAR 1.602-1; 42.302(a)), and any contracting officer may gain additional information through coordination with other offices or research on the numerous data bases (MOCAS, NAFI, EDA). Additionally, DFARS 204.7106(b)(3)(ii) reiterates the requirement for the contracting officer to ensure that sufficient funds are available before executing any contractual action (FAR 1.602-2(a), 32.703, 43.105(a)) and the processes in

FAR Subpart 32.6 concerning contract debt and recovered monies owed to the Government.

DoD Response: Do not concur. DoD believes it is important that both the PCO and the ACO are aware when the amount obligated will be decreased, since they both play integral roles in the contracting process. In some cases, the PCO may be planning to decrease an obligation on a contract line item, but the ACO may be aware that the items have been or are in the process of being delivered under that contract line item. Furthermore, negative obligations should only exist if the Government is owed monies, i.e., by recouping those monies the negative obligation will be eliminated.

4. *Comment:* The wording of proposed DFARS 204.7109 would require the contracting officer to do a good deal of research and interpretation to apply correctly. Recommend simplification of the language at 204.7109 to achieve the same objective with clearer, more easily applied criteria as follows:

“Use the clause at 252.204–7XXX, Billing Instructions, if:

(a) The application of the payment instructions in Section G of the contract necessitates that the applicable contract line item numbers be identified on the contractor’s payment request, and

(b) The contract does not otherwise require that either the payment request or the receiving report contain the applicable contract line item number (e.g., contract financing payments, public vouchers).”

DoD Response: Do not concur. DoD believes that, if the Government will require the contractor to bill at the contract line item level, there should be a contract clause that specifically delineates this requirement.

Furthermore, any requirement for the payment request to contain the applicable line item number should be in Section G of the contract. Adopting the respondent’s recommended language would imply that all payment instructions do not have to be included in Section G of the contract, which is contrary to the intent of this rule.

5. *Comment:* The proposed text at DFARS 204.7109 requires contractors to identify the applicable contract line items when submitting requests for contract financing and interim payments under cost-reimbursement contracts for services. It is cost-prohibitive and, in some cases, impossible for contractors to track and bill progress payments based on costs at the contract line item level. It is believed that the authors of the payment and billing instructions addressed in the

proposed PGI text recognized this problem, because the text proposed at PGI 204.7108(c)(4) provides that, for contracts that provide for progress payments based on costs, the contracting officer shall instruct the payment office to use paragraph (d)(11) instructions in accounting for the payment. Paragraph (d)(11) requires the payment office to make payment from each accounting classification reference number (ACRN) within the contract in the same proportion as the amount of funding unliquidated for each ACRN. If the payment office is directed to prorate payments, there is no reason for the contractor, in submitting progress billings, to break out payment requests by contract line item. Recommend that the reference in DFARS 204.7109(a), regarding the submission of a payment request for a contract financing payment, exclude payments on contracts that require progress payments based on costs. In addition, recommend revision of the proposed text at DFARS 204.7109 to exclude all cost-type contracts, that are funded by a single appropriation, from the requirement to separately identify a payment amount for each contract line item included in the payment request. If contracts contain only one appropriation, there is no need to require contractors to bill at the line item level, regardless of the number of ACRNs that have been assigned to the contract.

DoD Response: Concur in part. DoD recognizes the respondent’s concern that including a requirement for billing at the contract line item level may not be appropriate for certain fixed-price or cost-type contracts. However, the respondent’s recommended solution will not address this concern. Eliminating the requirement for a contract clause would not preclude a contracting officer from requiring a contractor to bill at the contract line item level for a particular contract. As previously noted, DoD believes that, if the Government requires the contractor to bill at the contract line item level, there should be a contract clause that specifically delineates this requirement.

DoD believes the respondent has a valid concern regarding the circumstances under which billing at the contract line item level is required. When a contract uses standard payment options (d)(7) through (11) for a particular contract type, there is no need for the contractor to identify the contract line item for that particular contract type, since the allocations will be done on a contract-wide basis. However, the contractor will need to identify the contract line item on the payment request when the contract, for

a particular contract type, uses standard payment options (d)(1) through (6) of PGI 204.7108, or requires contractor identification of the contract line item on the payment request through use of payment instruction (d)(12) of PGI 204.7108. The final rule reflects this requirement.

It is also important to note that a contractor should not be required to identify costs at the contract line item level if the contractor is simply going to use an allocation to identify such costs. In those cases where the contractor would simply be allocating the costs to obtain the contract line item billing, the contracting officer should select one of options (d)(7) through (11) (allocation at the contract level). This is preferable to the contractor allocating the costs to the contract line item level and having the payment office do a second allocation to the ACRN level.

DoD also believes that a contractor should not be required to bill costs at the contract line item level unless there are significant benefits to the Government. Thus, the final PGI text has been revised to require contractor billing at the contract line item level only when the contracting officer documents in the contract file that such a requirement provides significant benefits to the Government.

6. *Comment:* The proposed rule will have a significant impact on large and small contractors. The requirement proposed at DFARS 252.204–7XXX(a) for the specific identification of billing amounts by contract line item to “best reflect” costs will make it necessary for contractors to establish new systems and processes to provide more detailed reporting than that which is currently necessary on interim billings and financing submissions. Further, the lack of a definition for the term “best reflect contract work performance” will lead to the establishment of unattainable compliance requirements arising from inconsistent interpretations by different contracting and audit offices. This term will be inconsistently interpreted by contractors, contracting officers, payment officials, and DCAA auditors who evaluate contractor billing systems. Recommend elimination of paragraph (a) and that the entire billing instructions of DFARS 252.204–7XXX include the following language, most of which is excerpted from proposed paragraph (b): “When submitting a request for payment, the Contractor shall separately identify a payment amount for each contract line item that is included in the request.”

DoD Response: Concur in part. DoD recognizes the concern regarding unattainable compliance requirements,

in particular the requirement to “best” reflect work performance. However, DoD believes that the contract payments should provide a reasonable reflection of the work performance that relates to each contract line item. Therefore, the final rule replaces the requirement for identified line items to “best” reflect work performance with a requirement for identified line items to “reasonably” reflect work performance. In addition, the final rule permits the contracting officer to require billing at the contract line item level only when it is determined that such a requirement provides significant benefits to the Government. DoD believes these revisions mitigate the concerns regarding any possible significant impact on small and large entities.

7. *Comment:* The proposed invoice instructions at F-306(a) require electronic payment requests unless an exception in DFARS 232.7002 applies. The electronic invoicing exceptions in DFARS 232.7002 are not well-defined for all scenarios alluded to in 232.7002(a)(6). This leads to inconsistent processing, wasted effort by all parties, and unnecessary delays in payment. Therefore, it is recommended that DoD work with industry to develop a clearly defined exception process for situations where electronic invoicing cannot be achieved.

DoD Response: The recommendation is considered to be outside the scope of this case. However, the recommendation has been forwarded to the DoD office responsible for e-business matters.

8. *Comment:* For payment purposes on cost-type contracts, the goal should be to establish the minimum number of line items and appropriations accounts required to satisfy applicable statutes. If contracts contain only one appropriation, both the billing and payment process can be highly automated and still meet statutory requirements. Only one ACRN should be assigned to the unique combination of a specific appropriation and program year, substantially reducing the current ACRN count. Additionally, the appropriation and/or the ACRN should be used as the sole basis for a payment on cost-type contracts (asset valuation can be established in unique identification and contract management can be achieved via Cost/Schedule Status / Earned Value Management reporting). Use of appropriation level billings, when required, would reduce the billing detail by over 80 percent when compared to contract line item/ACRN level billing requirements. Also, the requirement to accumulate cost or even develop best/reasonable estimates should be used as a last resort to satisfy

statutory requirements. Therefore, to adopt this approach, recommend that the PGI contain a list of billing instructions for the contractor to follow.

DoD Response: Do not concur. DoD does not believe that the PGI text needs to include a list of billing instructions for the contractor to follow. There is no need for the contractor to allocate costs among contract line items when one of the payment options at PGI 204.7108(d)(7) through (11) is selected, i.e., that function can be better performed by the payment office. Furthermore, DoD believes that a contractor should not be required to identify costs at the contract line item level if the contractor is simply going to use an allocation to identify such costs. In those cases where the contractor would simply be allocating the costs to obtain contract line item billing, the contracting officer should select one of options (d)(7) through (11) (allocation at the contract level). This is preferable to the contractor allocating the costs to the contract line item level and having the payment office do a second allocation to the ACRN level.

9. *Comment:* The draft PGI text at 204.201(3)(i)(D)(1) directs users to the Directory of DCAA offices available via the Internet at <http://www.dcaa.mil/directory.htm>. The specific Web site address provided in the PGI is not current and should be updated. In addition, the text should include a reference to the DCAA cognizant field office locator, available at the same Web site.

DoD Response: Concur. This change has been included in the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized as follows:

This final rule amends the DFARS to improve payment and billing instructions in DoD contracts. The objective of the rule is to streamline payment procedures and ensure line item accountability in contractor payment requests. Based upon public comments, DoD has revised the rule to remove the requirement for contractor payment requests to identify the contract line items that “best” reflect work performance. Instead, the final rule includes a requirement for payment requests to identify the contract line items that “reasonably” reflect work performance. In addition, the final rule permits contracting officers to require

contractor billing at the contract line item level only when it is determined that such a requirement provides significant benefits to the Government. DoD believes these revisions mitigate the concerns raised during the public comment period, and that the rule will have an overall beneficial impact on small entities.

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

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 215, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 215, 252, and Appendix F to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 215, 252, and Appendix F to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.201 is revised to read as follows:

204.201 Procedures.

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

204.202 [Removed]

■ 3. Section 204.202 is removed.

■ 4. Section 204.7101 is amended by revising the definition of *Accounting classification reference number (ACRN)* to read as follows:

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.

* * * * *

■ 5. Section 204.7103-1 is amended by redesignating paragraphs (b) through (d) as paragraphs (d) through (f), respectively; and by adding new paragraphs (b) and (c) to read as follows:

204.7103-1 Criteria for establishing.

* * * * *

(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.

* * * * *

■ 6. Section 204.7103-2 is revised to read as follows:

204.7103-2 Numbering procedures.

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

■ 7. Section 204.7104-2 is revised to read as follows:

204.7104-2 Numbering procedures.

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

■ 8. Section 204.7106 is amended by adding paragraph (b)(3) to read as follows:

204.7106 Contract modifications.

* * * * *

(b) * * *

(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.

■ 9. Section 204.7107 is revised to read as follows:

204.7107 Contract accounting classification reference number (ACRN).

Follow the procedures at PGI 204.7107 for assigning ACRNs.

■ 10. Sections 204.7108 and 204.7109 are added to read as follows:

204.7108 Payment instructions.

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

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.

PART 215—CONTRACTING BY NEGOTIATION**215.204-2 [Removed]**

■ 11. Section 215.204-2 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Section 252.204-7006 is added to read as follows:

252.204-7006 Billing Instructions.

As prescribed in 204.7109, use the following clause:

Billing Instructions (Oct 2005)

When submitting a request for payment, the Contractor shall—

(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

Appendix F—[Amended]

■ 13. Appendix F to Chapter 2 is amended in Part 3 by revising section F-306 to read as follows:

Appendix F—Material Inspection and Receiving Report

* * * * *

F-306 Invoice instructions.

(a) Contractors shall submit payment requests in electronic form, unless an exception in 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the Wide Area WorkFlow-Receipt and Acceptance electronic form (see paragraph (b)(1) of the clause at 252.232-7003) fulfills the requirement for an MIRR.

(b) If the contracting officer authorizes the contractor to submit an invoice in paper form, the Government encourages, but does not require, the contractor to use the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare the MIRR and forward the required number of copies to the payment office as follows:

(1) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(2) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE, for all invoice submissions; and three copies: "INVOICE COPY," when the payment office requires four copies. Questions regarding the appropriate number of copies (*i.e.*, one or four) should be directed to the applicable payment office.

(3) Forward the appropriate number of copies to the payment office (Block 12

address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(4) Be sure to separate the copies of the MIRR used as an invoice from the copies of the MIRR used as a receiving report.

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BILLING CODE 5001-08-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 041126332-5039-02; I.D. 100405D]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl and jig gear to vessels using hook-and-line and pot gear in the BSAI. These actions are necessary to allow the 2005 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective October 5, 2005, until 2400 hours, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod TAC in the BSAI is 190,550 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). Pursuant to § 679.20(a)(7)(i)(A), 3,811 mt was allocated to vessels using jig gear, 97,181 mt to vessels using hook-and-line or pot gear, and 89,559 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to