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On December 30, 2003, the Federal Register noticed an amended interim rule on “Unique Item Identification and Valuation.” This amended interim rule modifies the rule issued October 10, 2003, and is effective for all solicitations issued on/after January 1, 2004.

Revised DFARS 211.274-1 provides that

“(a) DoD recognized unique identification, or a DoD recognized unique identification equivalent, is required for--

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

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

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

Further, Contractors are required to identify the “Government's unit acquisition cost” for specified items. The Government’s unit acquisition cost is defined as

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

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

“The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items need not be identified.”

Comments are due on/before March 1, 2004.

COMMENTS: Significantly, there is no commercial item exemption. Subcontractors at every tier could be impacted! Note also that this is effective for new solicitations and does not “technically” apply to old contracts—will contracting officers be “asking” for a global contract modification since marking is of “utmost” importance to DoD? The revised solicitation/contract clause, DFARS 252.211-7003 “Item Identification and Valuation,” provides extensive information on contract requirement for marking with a “DoD unique item identification,” definitions, commercial item marks, contractor obligations with respect to Material Inspection and Receiving Reports, flowdowns to subcontractors providing specified “subassemblies, components, and parts,” and information that must be submitted in accordance with that specified at <http://www.acq.osd.mil/uid> for contract compliance.

See Special Regulatory Update of October 10, 2003. The UID website provides critical information that should be consulted. The public comments (29) and DoD responses to the earlier interim rule provide additional insight on this UID marking requirement.

Items summarized in all Regulatory Updates are for general informational/discussion/educational purposes only and should not be relied upon in the course of representation or in the forming of decisions in legal matters— independent counsel should be obtained.