

Defense Federal Acquisition Regulation Supplement

Part 212—Acquisition of Commercial Items

SUBPART 212.70—PILOT PROGRAM FOR TRANSITION TO FOLLOW-ON CONTRACTING AFTER USE OF OTHER TRANSACTION AUTHORITY

(Added November 01, 2004)

212.7000 Scope.

This subpart establishes the pilot program authorized by Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136).

212.7001 Definitions.

As used in this subpart—

“Nontraditional defense contractor” means a business unit that—

- (1) Has entered into an other transaction agreement with DoD; and
- (2) Has not, for a period of at least 1 year prior to the date of the other transaction agreement, entered into or performed on—
 - (i) Any contract that is subject to full coverage under the cost accounting standards described in FAR Part 30; or
 - (ii) Any other contract exceeding \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the FAR.

“Other transaction” means a transaction that—

- (1) Is other than a contract, grant, or cooperative agreement;
- (2) Is not subject to the FAR or its supplements; and
- (3) Is entered into in accordance with 32 CFR Part 3.

212.7002 Pilot program.

212.7002-1 Contracts under the program.

(a) The contracting officer may use FAR Part 12 procedures to award a contract for an item or process that does not meet the definition of “commercial item,” if the contract—

- (1) Is awarded to a nontraditional defense contractor;
- (2) Is a follow-on contract for the production of an item or process begun as a prototype project under an other transaction agreement;
- (3) Does not exceed \$50,000,000;
- (4) Is awarded on or before September 30, 2008; and
- (5) Is either—

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- (i) A firm-fixed-price contract; or
- (ii) A fixed-price contract with economic price adjustment.

(b) See 212.7003 for special procedures pertaining to rights in technical data and computer software.

212.7002-2 Subcontracts under the program.

Except as provided in 212.7003, a subcontract for an item or process that does not meet the definition of “commercial item” may be treated as a subcontract for a commercial item, if the subcontract—

- (a) Is under a contract awarded in accordance with 212.7002-1;
- (b) Is awarded to a nontraditional defense contractor; and
- (c) Is either—
 - (1) A firm-fixed-price subcontract; or
 - (2) A fixed-price subcontract with economic price adjustment.

212.7003 Rights in technical data and computer software.

For purposes of determining rights in technical data under 227.7102 and rights in computer software under 227.7202, items or processes acquired under a contract or subcontract awarded in accordance with 212.7002 may be treated as developed in part with Federal funds and in part at private expense (i.e., mixed funding). When this occurs—

- (a) For technical data, use the clauses at 252.227-7013, Rights in Technical Data—Noncommercial Items, and 252.227-7037, Validation of Restrictive Markings on Technical Data;
- (b) For computer software, use the clauses at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, and 252.227-7019, Validation of Asserted Restrictions—Computer Software;
- (c) Require the contractor to include the clauses prescribed by paragraphs (a) and (b) of this section in subcontracts awarded in accordance with 212.7002-2; and
- (d) Negotiate for the appropriate technical data and computer software deliverables and special license rights in those deliverables, in view of the parties’ relative contributions to the development of the items or processes.