

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

(Revised June 8, 2011)

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 or as a research project carried out in accordance with 10 U.S.C. 2371;
- (3) Does not exceed \$50,000,000;
- (4) Is awarded on or before September 30, 2010; and

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(5) Is either—

- (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 technical data and computer software.

212.7002-2 Subcontracts under the program.

(a) 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—

(1) Is for the production of an item or process begun as a prototype project under an other transaction agreement or as a research project carried out in accordance with 10 U.S.C. 2371;

(2) Does not exceed \$50,000,000;

(3) Is awarded on or before September 30, 2010;

(4) Is awarded to a nontraditional defense contractor; and

(5) Is either—

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

(b) See [212.7003](#) for special procedures pertaining to technical data and computer software.

212.7002-3 Thresholds.

The contract and subcontract thresholds at [212.7002-1\(a\)\(3\)](#) and [212.7002-2\(a\)\(2\)](#) include the dollar value of all options in accordance with section 826 of the National Defense Authorization Act for Fiscal Year 2011. See also FAR 1.108(c).

212.7003 Technical data and computer software.

For purposes of establishing delivery requirements and license rights for technical data under [227.7102](#) and for computer software under [227.7202](#), there shall be a rebuttable presumption that items or processes acquired under a contract or subcontract awarded in accordance with [212.7002](#) were developed in part with Federal funds and in part at private expense (i.e., mixed funding).

(a) *Delivery requirements.* Acquire only the technical data and computer software that are necessary to satisfy agency needs. Follow the requirements at [227.7103-1](#) and [227.7103-2](#) for technical data, and [227.7203-1](#) and [227.7203-2](#) for computer software.

(b) *License rights.* Acquire only the license rights in technical data and computer software that are necessary to satisfy agency needs.

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(1) 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.

(2) 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.

(3) Require the contractor to include the clauses prescribed by paragraphs (b)(1) and (2) of this section in subcontracts awarded in accordance with [212.7002-2](#).

(4) When the standard license rights for items or processes developed with mixed funding do not provide the minimum rights necessary to satisfy agency needs, negotiate for special license rights in accordance with [227.7103-5\(d\)](#) and [227.7203-5\(d\)](#).