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.

[71 FR 18669, Apr. 12, 2006, as amended at 73 FR 21845, Apr. 23, 2008; 74 FR 2416, Jan. 15, 2009]

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).

[76 FR 33171, June 8, 2011]

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.


(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).

[71 FR 18669, Apr. 12, 2006]

Subpart 212.71—Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items

SOURCE: 76 FR 38049, June 29, 2011, unless otherwise noted.

212.7100 Scope.


212.7101 Definitions.

Military-purpose nondevelopmental item, nondevelopmental item, and nontraditional defense contractor, as used in this subpart, are defined in the provision at 252.212–7002.

212.7102 Pilot program.

212.7102–1 Contracts under the program.

The contracting officer may enter into contracts with nontraditional defense contractors for the acquisition of
military-purpose nondevelopmental items. See PGI 212.7102 for file documentation requirements. Each contract entered into under the pilot program shall—

(a) Be awarded using competitive procedures;

(b) Be a firm-fixed-price contract, or a fixed-price contract with an economic price adjustment clause;

(c) Be in an amount not in excess of $50 million;

(d) Provide—

(1) For the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

(2) That failure to make delivery as provided for under paragraph (d)(1) may result in termination for cause; and

(e) Be—

(1) Exempt from the requirement to submit certified cost or pricing data;

(2) Exempt from the cost accounting standards under 41 U.S.C. 1502; and

(3) Subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations.

[76 FR 38049, June 29, 2011, as amended at 77 FR 35880, June 15, 2012]

212.7102–2 Reporting requirements.

Departments and agencies shall prepare a consolidated annual report to provide information about contracts awarded under this pilot authority. The report shall be submitted to the Office of the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), by October 31 each year in accordance with the procedures at PGI 212.7102. See PGI 212.7102 for annual reporting format.

212.7102–3 Sunset of the pilot authority.

(a) The authority to carry out the pilot program described in this subpart expires on January 6, 2016.

(b) The expiration under paragraph (a) of this section of the authority to carry out the pilot program will not affect the validity of any contract awarded under the pilot program before the expiration of the pilot program under that paragraph.

212.7103 Solicitation provision.

Use the provision at 252.212–7002, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, in all solicitations that meet the applicability criteria of 212.7102–1 for this pilot program.