

Earned Value Management System, in the solicitation and contract.

Subpart 234.70—Acquisition of Major Weapon Systems as Commercial Items

SOURCE: 71 FR 58538, Oct. 4, 2006, unless otherwise noted.

234.7000 Scope of subpart.

This subpart—

- (a) Implements 10 U.S.C. 2379; and
- (b) Requires a determination by the Secretary of Defense and a notification to Congress before acquiring a major weapon system as a commercial item.

234.7001 Definition.

Major weapon system, as used in this subpart, means a weapon system acquired pursuant to a major defense acquisition program, as defined in 10 U.S.C. 2430 to be a program that—

- (1) Is not a highly sensitive classified program, as determined by the Secretary of Defense; and
- (2)(i) Is designated by the Secretary of Defense as a major defense acquisition program; or
- (ii) Is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditures for procurement of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars).

234.7002 Policy.

(a) *Major weapon systems.* (1) A DoD major weapon system may be treated as a commercial item, or acquired under procedures established for the acquisition of commercial items, only if—

- (i) The Secretary of Defense determines that—
 - (A) The major weapon system is a commercial item as defined in FAR 2.101; and
 - (B) Such treatment is necessary to meet national security objectives;
- (ii) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such a system; and

(iii) The congressional defense committees are notified at least 30 days before such treatment or acquisition occurs. Follow the procedures at PGI 234.7002.

(2) The authority of the Secretary of Defense to make a determination under paragraph (a)(1) of this section may not be delegated below the level of the Deputy Secretary of Defense.

(b) *Subsystems.* A subsystem of a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial item and acquired under procedures established for the acquisition of commercial items only if—

- (1) The subsystem is intended for a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (a) of this section; or
- (2) The contracting officer determines in writing that—
 - (i) The subsystem is a commercial item; and
 - (ii) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the subsystem.

(c) *Components and spare parts.* (1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial item only if—

- (i) The component or spare part is intended for—
 - (A) A major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (a) of this section; or
 - (B) A subsystem of a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (b) of this section; or
- (ii) The contracting officer determines in writing that—
 - (A) The component or spare part is a commercial item; and
 - (B) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of

234.7100

the price for the component or spare part.

(2) This paragraph (c) shall apply only to components and spare parts that are acquired by DoD through a prime contract or a modification to a prime contract, or through a sub-contract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value.

(d) *Relevant information.* To the extent necessary to make a determination under paragraph (a)(1)(ii), (b)(2), or (c)(1)(ii) of this section, the contracting officer may request the offeror to submit—

(1) Prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and

(2) Other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates, if the contracting officer determines that the information described in paragraph (d)(1) of this section is not sufficient to determine price reasonableness.

[74 FR 34264, July 15, 2009]

Subpart 234.71—Cost and Software Data Reporting

SOURCE: 75 FR 71561, Nov. 24, 2010, unless otherwise noted.

234.7100 Policy.

(a) The cost and software data reporting (CSDR) requirement is mandatory for major defense acquisition programs (as defined in 10 U.S.C. 2430), and major automated information system programs (as defined in 10 U.S.C. 2445a) as specified in DoDI 5000.02, Operation of the Defense Acquisition System and the DoD 5000.04-M-1, CSDR Manual. The CSDR system is applied in accordance with the reporting requirements established in DoDI 5000.02. The two principal components of the CSDR system are contractor cost data reporting and software resources data reporting.

(b) Prior to contract award, contracting officers shall consult with the Defense Cost and Resource Center to determine that the offeror selected for award has proposed a standard CSDR

48 CFR Ch. 2 (10-1-11 Edition)

system, as described in the offeror's proposal in response to the provision at 252.234-7003, that is in compliance with DoDI 5000.02, Operation of the Defense Acquisition System, and the DoD 5000.04-M-1, CSDR Manual.

(c) Contact information for the Defense Cost and Resource Center and the Deputy Director, Cost Assessment, is located at PGI 234.7100.

234.7101 Solicitation provision and contract clause.

(a)(1) Use the provision at 252.234-7003, Notice of Cost and Software Data Reporting System, in all solicitations that include the clause at 252.234-7004, Cost and Software Data Reporting.

(2) Use the provision with its Alternate I when the clause at 252.234-7004, Cost and Software Data Reporting, is used with its Alternate I.

(b)(1) Use the clause at 252.234-7004, Cost and Software Data Reporting System, in all solicitations and contracts for major defense acquisition programs and major automated information system programs that exceed \$50 million.

(2) Use the clause with its Alternate I in solicitations and contracts for major defense acquisition programs and major automated information system programs with a value equal to or greater than \$20 million but less than or equal to \$50 million, when so directed by the program manager with the approval of the OSD Deputy Director, Cost Assessment.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

235.001 Definitions.

235.006 Contracting methods and contract type.

235.006-70 Manufacturing Technology Program.

235.006-71 Competition.

235.008 Evaluation for award.

235.010 Scientific and technical reports.

235.015-70 Special use allowances for research facilities acquired by educational institutions.

235.016 Broad agency announcement.

235.017 Federally Funded Research and Development Centers.

235.017-1 Sponsoring agreements.

235.070 Indemnification against unusually hazardous risks.