

# PART 234 - MAJOR SYSTEM ACQUISITION

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## **234.001 Definition.**

As used in this subpart—

“Acceptable earned value management system” and “earned value management system” are defined in the clause at [252.234-7002](#) , Earned Value Management System.

“Production of major defense acquisition program” means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or an activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

“Significant deficiency” is defined in the clause at [252.234-7002](#) , Earned Value Management System, and is synonymous with “noncompliance.”

## **234.003 Responsibilities.**

DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the Defense

Acquisition System, contain the DoD implementation of OMB Circular A-109 and OMB Circular A-11.

## **234.004 Acquisition strategy.**

(1) See [209.570](#) for policy applicable to acquisition strategies that consider the use of lead system integrators.

(2) *Contract type.*

(i) In accordance with section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), for major defense acquisition programs at Milestone B—

(A) The milestone decision authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(B) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(1) Shall include an explanation of the level of program risk; and

(2) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(C) If a cost-reimbursement type contract is selected, the contract file shall include the milestone decision authority's written determination that—

(1) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

(2) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of 10 U.S.C. 2366a.

(ii) In accordance with section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), the contracting officer shall—

(A) Not use cost-reimbursement line items for the acquisition of production of major defense acquisition programs, unless the Under Secretary of Defense for Acquisition and Sustainment (USDA&S)), or the milestone decision authority when the milestone decision authority is the service acquisition executive of the military department that is managing the program, submits to the congressional defense committees—

(1) A written certification that the particular cost-reimbursement line items are needed to provide a required capability in a timely and cost effective manner; and

(2) An explanation of the steps taken to ensure that cost-reimbursement line items are used only to achieve the purposes of the exception; and

(B) Include a copy of such congressional certification in the contract file.

(iii) See [216.301-3](#) for additional contract type approval requirements for cost-reimbursement contracts.

(iv) For fixed-price incentive (firm target) contracts, contracting officers shall comply with the guidance provided at PGI [216.403-1](#) (1)(ii)(B) and (C).

(3) The contracting officer shall include in solicitations for contracts for the technical maturation and risk reduction phase, engineering and manufacturing development phase or production phase of a weapon system, including embedded software—

(i) Clearly defined measurable criteria for engineering activities and design specifications for reliability and maintainability provided by the program manager, or the comparable requiring activity official performing program management responsibilities; or

(ii) Ensure a copy of the justification, executed by the program manager or the comparable requiring activity official performing program management responsibilities for the decision that engineering activities and design specifications for reliability and maintainability should not be a requirement, is included in the contract file (10 U.S.C. 2443).

## **234.005 General requirements.**

### **234.005-1 Competition.**

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement may contain a contract line item or contract option for the provision of advanced component development, prototype, or initial production of technology developed under the contract or the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract only when it adheres to the following limitations:

(1) The contract line item or contract option shall be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(2) The term of the contract line item or contract option shall be for not more than 2 years.

(3) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed \$100 million in fiscal year 2017 constant dollars. (10 U.S.C. 2302e)

### **234.005-2 Mission-oriented solicitation.**

See [215.101-2](#) -70(b)(2) for the prohibition on the use of the lowest price technically acceptable source selection process for engineering and manufacturing development of a major defense acquisition program for which budgetary authority is requested beginning in fiscal year 2019.

## **SUBPART 234.2 —EARNED VALUE MANAGEMENT SYSTEM**

### **234.201 Policy.**

(1) DoD applies the earned value management system requirement as follows:

(i) For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the earned value management system shall comply with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748).

(ii) For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the contractor shall have an earned value management system that has been determined by the cognizant Federal agency to be in compliance with the guidelines in ANSI/EIA-748.

(iii) For cost or incentive contracts and subcontracts valued at less than \$20,000,000—

(A) The application of earned value management is optional and is a risk-based decision;

(B) A decision to apply earned value management shall be documented in the contract file; and

(C) Follow the procedures at PGI [234.201](#) (1)(iii) for conducting a cost-benefit analysis.

(iv) For firm-fixed-price contracts and subcontracts of any dollar value—

(A) The application of earned value management is discouraged; and

(B) Follow the procedures at PGI [234.201](#) (1)(iv) for obtaining a waiver before applying earned value management.

(2) When an offeror proposes a plan for compliance with the earned value management system guidelines in ANSI/EIA-748, follow the review procedures at PGI [234.201](#) (2).

(3) The Defense Contract Management Agency is responsible for determining earned value management system compliance when DoD is the cognizant Federal agency.

(4) See PGI [234.201](#) (3) for additional guidance on earned value management.

(5) The cognizant contracting officer, in consultation with the functional specialist and auditor, shall—

(i) Determine the acceptability of the contractor's earned value management system and approve or disapprove the system; and

(ii) Pursue correction of any deficiencies.

(6) In evaluating the acceptability of a contractor's earned value management system, the contracting officer, in consultation with the functional specialist and auditor, shall determine whether the contractor's earned value management system complies with the system criteria for an acceptable earned value management system as prescribed in the clause at [252.234-7002](#) , Earned Value Management System.

(7) *Disposition of findings*—

(i) *Reporting of findings.* The functional specialist or auditor shall document findings and recommendations in a report to the contracting officer. If the functional specialist or auditor identifies any significant deficiencies in the contractor's earned value management system, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(ii) *Initial determination.* (A) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's earned value management system is acceptable and approved; or

(B) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at [252.234-7002](#) , Earned Value Management System) due to the contractor's failure to meet one or more of the earned value management system criteria in the clause at [252.234-7002](#) , the contracting officer shall—

(1) Promptly make an initial written determination of any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiencies;

(2) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(3) Evaluate the contractor's response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(iii) *Final determination.* (A) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(1) The contractor's earned value management system is acceptable and approved, and no significant deficiencies remain, or

(2) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(i) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(ii) Disapprove the system in accordance with the clause at [252.234-7002](#) , Earned Value Management System, when initial validation is not successfully completed within the timeframe approved by the contracting officer, or the contracting officer determines that the existing earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the contracting officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the contracting officer shall use discretion to disapprove the system based on input received from functional specialists and the auditor; and

(iii) Withhold payments in accordance with the clause at [252.242-7005](#) , Contractor Business Systems, if the clause is included in the contract.

(B) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies at PGI [234.201](#) (7).

(8) *System approval.* The contracting officer shall promptly approve a previously disapproved earned value management system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(9) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

### **234.203 Solicitation provisions and contract clause.**

For cost or incentive contracts valued at \$20,000,000 or more, and for other contracts for which EVMS will be applied in accordance with [234.201](#) (1)(iii) and (iv)—

(1) Use the provision at [252.234-7001](#) , Notice of Earned Value Management System, instead of the

provisions at FAR 52.234-2, Notice of Earned Value Management System - Pre-Award IBR, and FAR 52.234-3, Notice of Earned Value Management System - Post-Award IBR, in the solicitation; and

(2) Use the clause at [252.234-7002](#) , Earned Value Management System, instead of the clause at FAR 52.234-4, Earned Value Management System, in the solicitation and contract.

## **SUBPART 234.70 –ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ITEMS**

### **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.**

As used in this subpart—

*Major weapon system* means a weapon system acquired pursuant to a major defense acquisition program.

### **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; and

(ii) 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) shall be treated as a commercial item and acquired under procedures established for the acquisition of commercial items 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 the subsystem is a commercial item.

*(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 the component or spare part is a commercial item.

(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 subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value.

(d) *Relevant information.* See [212.209\(a\)](#) for requirements of 10 U.S.C. 2377 with regard to market research.

(1) To the extent necessary to make a determination of price reasonableness, the contracting officer shall require the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers.

(2) If the contracting officer determines that the offeror cannot provide sufficient information described in paragraph (d)(1) of this section to determine the reasonableness of price, the contracting officer shall request the offeror to submit information on—

(i) Prices paid for the same or similar items under different terms and conditions;

(ii) Prices paid for similar levels of work or effort on related products or services;

(iii) Prices paid for alternative solutions or approaches; and

(iv) Other relevant information that can serve as the basis for a price reasonableness determination.

(3) If the contracting officer determines that the information submitted pursuant to paragraphs (d)(1) and (2) of this section is not sufficient to determine the reasonableness of price, the contracting officer shall request the offeror to submit other relevant information, including uncertified cost data. However, no uncertified cost data may be required in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price.

(4) An offeror shall not be required to submit information described in paragraph (d)(3) of this section with regard to a commercially available off-the-shelf item. An offeror may be required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to paragraphs (d)(1) and (2) of this section is not sufficient to determine the reasonableness of price.

(5) An offeror may submit information or analysis relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item. A contracting officer may consider

such information or analysis in addition to the information submitted pursuant to paragraphs (d)(1) and (2) of this section. For additional guidance see PGI 234.7002(d)(5).

## **SUBPART 234.71 –COST AND SOFTWARE DATA REPORTING**

### **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 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) Use the basic or the alternate of the provision at 252.234-7003, Notice of Cost and Software Data Reporting System, in any solicitation that includes the basic or the alternate of the clause at [252.234-7004](#), Cost and Software Data Reporting.

(1) Use the basic provision when the solicitation includes the clause at [252.234-7004](#), Cost and Software Data Reporting—Basic.

(2) Use the alternate I provision when the solicitation includes the clause at [252.234-7004](#), Cost and Software Data Reporting—Alternate I.

(b) Use the basic or the alternate of the clause at [252.234-7004](#), Cost and Software Data Reporting System, in solicitations that include major defense acquisition programs or major automated information system programs as follows:

(1) Use the basic clause in solicitations and contracts for major defense acquisition programs or major automated information system programs that exceed \$50 million.

(2) Use the alternate I clause in solicitations and contracts for major defense acquisition programs or 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.