

defined in FAR 22.401) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 shall cite that fact.

[56 FR 36429, July 31, 1991, as amended at 71 FR 39011, July 11, 2006]

239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges shall be based on estimated costs. The contracting officer should negotiate special assembly rates and charges before starting service. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly shall be modified to reflect negotiated final rates and charges.

[56 FR 36429, July 31, 1991, as amended at 71 FR 39011, July 11, 2006]

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, use the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

- (1) 252.239-7002, Access;
- (2) 252.239-7004, Orders for Facilities and Services;

(3) 252.239-7005, Rates, Charges, and Services;

(4) 252.239-7006, Tariff Information;

(5) 252.239-7007, Cancellation or Termination of Orders;

(6) 252.239-7008, Reuse Arrangements.

(b) Use the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239-7011, Special Construction and Equipment Charges; and

(2) 252.239-7012, Title to Telecommunication Facilities and Equipment.

(c) Use the following clauses in basic agreements for telecommunications services—

(1) 252.239-7013, Obligation of the Government;

(2) 252.239-7014, Term of Agreement, and insert the effective date of the agreement in paragraph (a) of the clause; and

(3) 252.239-7015, Continuation of Communication Service Authorizations, as appropriate, and insert in paragraph (a) of the clause, the name of the contracting office and the basic agreement or contract number which is being superseded.

(d) Use the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires secure telecommunications.

[56 FR 36429, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992; 62 FR 40473, July 29, 1997; 70 FR 67919, Nov. 9, 2005; 71 FR 39011, July 11, 2006]

PART 241—ACQUISITION OF UTILITY SERVICES

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AUTHORITY: 48 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 63 FR 11539, Mar. 9, 1998, unless otherwise noted.

Subpart 241.1—General

241.101 Definitions.

As used in this part—

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means for the—

- (1) Army, the Chief of Engineers;
- (2) Navy, the Commander, Naval Facilities Engineering Command;
- (3) Air Force, the head of a contracting activity; and
- (4) Defense Logistics Agency, the head of a contracting activity.

[63 FR 11539, Mar. 9, 1998, as amended at 71 FR 3417, Jan. 23, 2006]

241.102 Applicability.

(a) This part applies to purchase of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquefied petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However, it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

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(B) 10 U.S.C. 2394a for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

241.103 Statutory and delegated authority.

(1) The contracting officer may enter into a utility service contract related to the conveyance of a utility system for a period not to exceed 50 years (10 U.S.C. 2688(d)(2)).

(2) See 217.175 for authority to enter into multiyear contracts for electricity from renewable energy sources.

(3) See PGI 241.103 for statutory authorities and maximum contract periods for utility and energy contracts.

[71 FR 3417, Jan. 23, 2006, as amended at 74 FR 52896, Oct. 15, 2009; 75 FR 34943, June 21, 2010]

Subpart 241.2—Acquiring Utility Services

241.201 Policy.

(1) DoD, as a matter of comity, generally complies with the current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body—

(i) Are considered “prices set by law or regulation”;

(ii) Are sufficient to set prices without obtaining cost or pricing data (see FAR Subpart 15.4); and

(iii) Are a valid basis on which prices can be determined fair and reasonable.

(4) Compliance with the regulations, practices, and decisions of independent

regulatory bodies as a matter of comity is not a substitute for the procedures at FAR 41.202(a).

[71 FR 3418, Jan. 23, 2006]

241.202 Procedures.

(1) *Connection and service charges.* The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(i) No connection charge.

(ii) Termination liability. Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(iii) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(iv) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, non-recurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the

use of (and costs for) facilities when large nonrefundable charges are required.

(2) *Construction and labor requirements.* Follow the procedures at PGI 241.202(2) for construction and labor requirements associated with connection and service charges.

[71 FR 3417, Jan. 23, 2006]

241.205 Separate contracts.

Follow the procedures at PGI 241.205 when acquiring utility services by separate contract.

[71 FR 3417, Jan. 23, 2006]

Subpart 241.5—Solicitation Provision and Contract Clauses

241.501 Solicitation provision and contract clauses.

(d)(1) Use a clause substantially the same as the clause at FAR 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services to be provided are subject to an independent regulatory body.

(2) Use a clause substantially the same as the clause at FAR 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services to be provided are not subject to a regulatory body or are subject to a non-independent regulatory body.

[71 FR 3418, Jan. 23, 2006]

241.501-70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or termination liability exist, use the clause at 252.241-7000, Superseding Contract.

(b) Use the clause at 252.241-70001, Government Access, when the clause at FAR 52.241-5, Contractor's Facilities, is used.