Part 237 - SERVICE CONTRACTING

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Parent topic: Defense Federal Acquisition Regulation

Subpart 237.1 - SERVICE CONTRACTS—GENERAL

237.101 Definitions.

As used in this subpart—

“Increased performance of security-guard functions,”

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

“Senior mentors” means retired flag, general, or other military officers or retired senior civilian officials who provide expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

237.102 Policy.

(b)(1) *Preference for certain commercial services.* See 212.272 for procedures for implementation of the preference for commercial facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services, as required by section 876 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

(2) *Public-private competitions*. See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A-76.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See 207.503 (e) for the associated documentation requirement.

(e) Program officials shall obtain assistance from contracting officials through the Peer Review process at 201.170 .

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited from entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(b) Under Section 2907 of Pub. L. 103-160, this prohibition does not apply to services at installations being closed (see Subpart 237.74).

(c)(1) Under section 332 of Public Law 107-314, as amended by section 333 of Public Law 109-364 and section 343 of Public Law 110-181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if–

(i) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(ii) The agency has determined that—

(A) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(B) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(C) Performance of such functions will not result in a reduction in the security of the installation or facility;

(iii) Contract performance will not extend beyond September 30, 2012; and

(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed the following limitations:

(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006.

(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(D) For fiscal year 2010, the number equal to 70 percent of the total number of such personnel

employed under such contracts on October 1, 2006.

(E) For fiscal year 2011, the number equal to 60 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(F) For fiscal year 2012, the number equal to 50 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(2) Follow the procedures at PGI 237.102-70 (c) to ensure that the personnel limitations specified in paragraph (c)(1)(iv) of this subsection are not exceeded.

237.102-71 Limitation on service contracts for military flight simulators.

(a) *Definitions*. As used in this subsection—

(1) "Military flight simulator" means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

(2) "Service contract" means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 6701.

(b) Under Section 832 of Pub. L. 109-364, as amended by Section 883(b) of Pub. L. 110-181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is in the national interest; and

(2) Provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis shall include, at a minimum—

(i) A clear explanation of the need for the contract; and

(ii) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

(A) A rationale for including the alternative.

(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

(C) A discussion of the benefits to be realized from the alternative.

(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer shall notify the program officials of the prohibition in paragraph (b) of this subsection. If the program officials decide to request a waiver from the Secretary of Defense under paragraph (b) of this subsection, the contracting officer shall follow the procedures at PGI 237.102-71 .

237.102-72 Contracts for management services.

In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—

(1) Courses of action to be taken in the best interest of the Government; and

(2) Best technical performance for the warfighter; and

(c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

237.102-73 Prohibition on contracts for services of senior mentors.

DoD is prohibited from entering into contracts for the services of senior mentors. *See* PGI 237.102-73 for references to DoD policy and implementation guidance.

237.102-74 Taxonomy for the acquisition of services, and supplies and equipment.

See PGI 237.102-74 for further guidance on the taxonomy for the acquisition of services and the acquisition of supplies and equipment.

237.102-75 Defense Acquisition Guidebook.

See PGI 237.102-75 for information on the Defense Acquisition Guidebook, Chapter 10, Acquisition of Services.

237.102-76 Acquisition of computer software and computer software documentation under services contracts.

(a) See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation for services contracts that require the development or modification of commercial computer software.

(b) See 227.7203 for policy on the acquisition of other than commercial computer software and other than commercial computer software documentation for services contracts that require the development or modification of other than commercial computer software.

237.102-77 Reserved.

237.102-78 Market research report guide for improving the tradecraft in services acquisition.

See PGI 210.070 for guidance on use of the market research report guide to conduct and document market research for service acquisitions.

237.102-79 Private sector notification requirements in support of in-sourcing actions.

In accordance with 10 U.S.C. 2463, contracting officers shall provide written notification to affected incumbent contractors of Government in-sourcing determinations. Notification shall be provided within 20 business days of the contracting officer's receipt of a decision from the cognizant component in-sourcing program official. The notification will summarize the requiring official's final determination as to why the service is being in-sourced and shall be coordinated with the component's in-sourcing program official. No formal hiring or contract-related actions may be initiated prior to such notification, except for preliminary internal actions associated with hiring or contract modification. See the OASD (RFM) memorandum entitled “Private Sector Notification Requirements in Support of In-sourcing Actions,” dated January 29, 2013, for further information, which is available at PGI 237.102-79 .

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature;

(2) Acquisition of the services is advantageous to the national defense;

(3) DoD personnel with necessary skills are not available;

(4) Excepted appointment cannot be obtained;

(5) A nonpersonal services contract is not practicable;

(6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(7) Any other determination required by statues has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(1) Direct health care services provided in medical treatment facilities;

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

(3) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR Part 6 competition requirements (see 206.001 (b)).

(C) Approval requirements for—

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)*(1)* and *(2)* of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)*(3)* of this section), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall

either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(iii)(A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—

(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)*(1)(i)* of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)*(2)* of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

(d) See 237.503 (c) for requirements for certification and approval of requirements for services to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(i) Temporary (not more than 1 year); or

(ii) Intermittent (not cumulatively more than 130 days in 1 year).

(2) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 3133).

237.109 Services of quasi-military armed forces.

See 237.102-70 for prohibition on contracting for firefighting or security-guard functions.

237.170 Approval of contracts and task orders for services.

237.170-1 Scope.

This section—

(a) Implements 10 U.S.C. 4501; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through—

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below $100 million, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding $100 million, obtain the approval of the senior procurement executive.

(b) Acquisition of services through use of a contract or task order issued by a non-DoD agency. Comply with the review, approval, and reporting requirements established in accordance with subpart 217.7 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.171 Training for contractor personnel interacting with detainees.

237.171-1 Scope.

This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

237.171-2 Definition.

“Combatant commander,” “detainee,” and “personnel interacting with detainees,” as used in this section, are defined in the clause at 252.237-7019 , Training for Contractor Personnel Interacting with Detainees.

237.171-3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with detainees shall include a requirement that such contractor personnel—

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI 237.171-3 (b).

237.171-4 Contract clause.

Use the clause at 252.237-7019 , Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of services if—

(a) The clause at 252.225-7040 , Contractor Personnel Supporting U.S. Armed Force(s) Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

237.172 Service contracts surveillance.

(a) Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR subpart 46.4.) Retain quality assurance surveillance plans in the contract file. See http://sam.dau.mil, Step Four – Requirements Definition, for examples of quality assurance surveillance plans.

(b) See PGI 216.505-70 for guidance regarding minimum labor category qualifications for orders issued under multiple award services contracts.

237.173 Prohibition on interrogation of detainees by contractor personnel.

237.173-1 Scope.

This section prescribes policies that prohibit interrogation of detainees by contractor personnel, as required by section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

237.173-2 Definitions. As used in this subpart-

“Detainee” means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

“Interrogation of detainees” means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

237.173-3 Policy.

(a) No detainee may be interrogated by contractor personnel.

(b) Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees if—

(1) Such personnel are subject to the same laws, rules, procedures, and policies (including DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix,

(http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf); DoD Directive 2310.01E, The Department of Defense Detainee Program (http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf); and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, (http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf)); pertaining to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations; and

(2) Appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

237.173-4 Waiver.

The Secretary of Defense may waive the prohibition in 237.173-3 (a) for a period of 60 days, if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States. Not later than five days after issuance of the waiver, the Secretary shall submit written notification to Congress. See specific waiver procedures at DoDI 1100.22.

237.173-5 Contract clause.

Insert the clause at 252.237-7010 , Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the provision of services.

237.174 Disclosure of information to litigation support contractors.

See 204.74 for disclosure of information to litigation support contractors.

237.175 Training that uses live vertebrate animals.

Use the clause at 235.072 (a), when contracting for training that will use live vertebrate animals.

Subpart 237.2 - ADVISORY AND ASSISTANCE SERVICES

237.270 Acquisition of audit services.

(a) *General policy.*

(1) Do not contract for audit services unless—

(i) The cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization; or

(ii) Temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) See 215.101-2-70(b)(3) for the prohibition on the use of the lowest price technically acceptable source selection process when acquiring audit services.

(3) See PGI 237.270 for a list of DoD publications that govern the conduct of audits.

(b) *Contract period.* Except in unusual circumstances, award contracts for recurring audit services for a 1-year period with at least 2 option years.

(c) *Approvals.* Do not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) *Transparency requirement for firms used to support DoD audits.*

(1) This paragraph (d) implements the requirements of section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) for transparency of accounting firms used to support DoD audits; and extends the statutory requirement, as a matter of DoD policy, to firms other than accounting firms in order to ensure consistent availability of data for contracting officer evaluation and appropriate use.

(2) This requirement applies to solicitations and contracts for—

(i) Financial statement auditing required under 31 U.S.C. 3521(e); or

(ii) Audit remediation services in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b.

(3) Any firm responding to a solicitation or awarded a contract for the acquisition of the services described in paragraph (d)(2) of this section is required to represent with regard to whether it has been subject to disciplinary proceedings within the last 3 years and, if the offeror represents that it has, to disclose to DoD before any contract action (including award, renewals, and modifications)—

(i) The details of any disciplinary proceedings, with respect to the firm or its associated persons (including principals and employees), before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by accounting firms or firms other than accounting firms; and

(ii) For subsequent contract actions after contract award, whether there has been any change with regard to previously reported disciplinary proceedings since the last contract action.

(e) *Solicitation provisions and contract clauses.*

(1) Use the provision at 252.237-7000 , Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237-7001 , Compliance with Audit Standards, in solicitations and contracts for audit services.

(3) Use the provision at 252.237-7025, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits.

(4) Use the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of financial statement auditing or audit remediation services as described in paragraph (d)(2) of this section.

237.271 Consulting services.

See 209.572 for requirements related to conflicts of interest in consulting services.

Subpart 237.5 - MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

237.503 Agency-head responsibilities.

(c) The agency head or designee shall employ procedures to ensure that requirements for service contracts are vetted and approved as a safeguard to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract. Contracting officers shall follow the procedures at PGI 237.503 , include substantially similar certifications in conjunction with service contract requirements, and place the certification in the contract file. The program manager or other official responsible for the requirement, at a level specified by the agency, should execute the certification. In addition, contracting officers and program managers should remain aware of the descriptive elements at FAR 37.104(d) to ensure that a service contract does not inadvertently become administered as a personal-services contract.

Subpart 237.6 - (REMOVED)

(June 25, 2004)

Subpart 237.70 - MORTUARY SERVICES

237.7000 Scope.

This subpart—

(a) Applies to contracts for mortuary services (the care of remains) for military personnel within the United States; and

(b) May be used as guidance in areas outside the United States for mortuary services for deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies or Services, to obtain mortuary services.

237.7002 Area of performance and distribution of contracts.

Follow the procedures at PGI 237.7002 for—

(a) Defining the geographical area to be covered by the contract; and

(b) Distributing copies of the contract.

237.7003 Solicitation provisions and contract clauses.

(a) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237-7004 , Area of Performance, in solicitations or contracts that include port of entry requirements:

(1) 252.237-7003 , Requirements, (insert activities authorized to place orders in paragraph (e) of the clause).

(2) 252.237-7004 , Area of Performance.

(3) 252.237-7005 , Performance and Delivery.

(4) 252.237-7006 , Subcontracting.

(5) 252.237-7007 , Termination for Default.

(6) 252.237-7008 , Group Interment.

(7) 252.237-7009 , Permits.

(8) 252.237-7011 , Preparation History.

(b) Use the clause at FAR 52.245-1, Government Property, with its Alternate I, in solicitations and contracts that include port of entry requirements.

Subpart 237.71 - LAUNDRY AND DRY CLEANING SERVICES

237.7100 Scope.

This subpart—

(a) Applies to contracts for laundry and dry cleaning services within the United States; and

(b) May be used as guidance in areas outside the United States.

237.7101 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237-7012 , Instruction to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237-7013 , Instruction to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237-7014 , Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237-7015 , Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value. When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Use the basic or an alternate of the clause at 252.237-7016 , Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the basic clause when services are not to be provided on a bulk weight basis.

(2) Use the alternate I clause when services are for bag type laundry to be provided on a bulk weight basis.

(3) Use the alternate II clause when services are unsorted laundry to be provided on a bulk weight basis.

(f) Use the clause at 252.237-7017 , Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d)(1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d)(1) and (2) of the clause may be modified to meet local conditions.

(g) Use the clause at 252.237-7018 , Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.

Subpart 237.72 - EDUCATIONAL SERVICE AGREEMENTS

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart—

(1) “Facilities” does not include the institution's dining rooms or dormitories; and

(2) “Fees” does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract, but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when—

(1) The Government pays normal tuition and fees for educational services provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution's normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution's academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart shall be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

EDUCATIONAL SERVICE AGREEMENT

Agreement No. _____

1. This agreement entered into on the _____ day of _____ _____, is between the Government, represented by the Contracting Officer, and the Contractor, _____(name of institution)_____, an educational institution located in _____(city)_____, ____(state)_____.

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor's institution. The Contractor shall provide instruction with standard offerings of courses available to the public.

3. The Government shall pay for services under the Contractor's normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is $_____. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.

8. Advance payments are authorized by 10 U.S.C. 2396(a)(3).

9. Submit invoices to: _____(name and address of activity)_____.

SCHEDULE PROVISIONS

1. Ordering procedures and services to be provided.

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a (insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor's institution one or more Government-selected persons who have already been accepted for admission under the Contractor's usual admission standards.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees—

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

(iii) If there is an appeal of the determination, process the appeal under the Contractor's standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. Change in curriculum. The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor's consent.

3. Payment.

(a) The Government shall pay the Contractor the normal tuition and fees which the Contractor charges any students pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided—

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include—

(i) Penalty fees for late registration or change of course caused by the Government;

(ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor's publicly announced fee schedule.

(e) The Contractor shall not charge the Government for—

(i) Permit charges, such as vehicle registration or parking fees, unless specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit _____ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within _____ days after the start of the term and shall include—

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor's normal tuition and fee schedule, the Contractor may submit a supplemental invoice or

make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.*

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will furnish _____ copies of the orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor's standard procedures.

5. *Transcripts*. Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. *Student teaching*. The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in the student's best interests to assist in the institution's teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor's practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. *Termination of agreement.*

(a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

GENERAL PROVISIONS

Use the following clauses in educational service agreements:

1. FAR 52.202-1, Definitions, and add the following paragraphs (h) through (m).

(h) “Term” means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes “semester,” “trimester,” “quarter,” or any similar word the Contractor may use.

(i) “Course” means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(j) “Curriculum” means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(k) “Catalog” means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes “bulletin,” “announcement,” or any other similar word the Contractor may use.

(l) “Tuition” means the amount of money charged by an educational institution for instruction, not including fees.

(m) “Fees” means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203-3, Gratuities.

3. FAR 52.203-5, Covenant Against Contingent Fees.

4. FAR 52.204-1, Approval of Contract, if required by department/agency procedures.

5. FAR 52.215-2, Audit and Records—Negotiation.

6. FAR 52.215-8, Order of Precedence—Uniform Contract Format.

7. Conflicts Between Agreement and Catalog. Insert the following clause:

CONFLICTS BETWEEN AGREEMENT AND CATALOG

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. FAR 52.222-3, Convict Labor.

9. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222-26, Equal Opportunity.

10. FAR 52.233-1, Disputes.

11. Assignment of Claims. Insert the following clause:

ASSIGNMENT OF CLAIMS

No claim under this agreement shall be assigned.

12. FAR 52.252-4, Alterations in Contract, if required by department/agency procedures.

SIGNATURE PAGE

Agreement No. _____ Date _____

THE UNITED STATES OF AMERICA

BY: _____

(Contracting Officer)

Activity _____
Location _____

(NAME OF CONTRACTOR)
BY: _____
(Title) _____

Subpart 237.73 - SERVICES OF STUDENTS AT RESEARCH AND DEVELOPMENT LABORATORIES

237.7300 Scope.

This subpart prescribes procedures for acquisition of temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories (10 U.S.C. 4143).

237.7301 Definitions.

As used in this subpart—

(a) “Institution of higher learning” means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that—

(1) Is located in the United States or its outlying areas;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) “Nonprofit organization” means any organization described by Section 501(c)(3) of Title 26 of the U.S.C. which is exempt from taxation under Section 501(a) of Title 26.

(c) “Student” means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual shall remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(d) “Technical support” means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 General.

Generally, agencies will acquire services of students at institutions of higher learning by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR Part 19, FAR 13.003(b)(1), or DFARS Part 219. Award authority for these contracts is 10 U.S.C. 3204(a) and 10 U.S.C. 4143.

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but shall include the clauses at FAR 52.232-3, Payments Under Personal Services Contracts, and FAR 52.249-12, Termination (Personal Services).

Subpart 237.74 - SERVICES AT INSTALLATIONS BEING CLOSED

237.7400 Scope.

This subpart prescribes procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection, airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended.

237.7401 Policy.

The authority in 206.302-5 (b)(ii) to contract with local governments—

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government are in the best interests of the Department of Defense.

237.7402 Contract clause.

Use the clause at 252.237-7022 , Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subpart.

Subpart 237.75 - ACQUISITION AND MANAGEMENT OF INDUSTRIAL RESOURCES

237.7501 Definition.

“Facilities project,” as used in this subpart, means a Government project to provide, modernize, or replace real property for use by a contractor in performing a Government contract or subcontract.

237.7502 Policy.

(a) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing requests for facilities projects.

(b) Departments and agencies shall submit reports of facilities projects to the House and Senate Armed Services Committees—

(1) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and

(2) In advance of starting construction for a facilities project regardless of cost. Use DD Form 1391, FY__ Military Construction Project Data, to notify congressional committees of projects that are not included in the annual budget.

Subpart 237.76 - CONTINUATION OFESSENTIAL CONTRACTOR SERVICES

237.7600 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services which support mission-essential functions.

237.7601 Definitions.

As used in this subpart, “essential contractor service” and “mission-essential functions” are defined in the clause at 252.237-7023 , Continuation of Essential Contractor Services.

237.7602 Policy.

(a) Contractors providing services designated as essential contractor services shall be prepared to continue providing such services, in accordance with the terms and conditions of their contracts, during periods of crisis. As a general rule, the designation of services as essential contractor services will not apply to an entire contract but will apply only to those service functions that have been specifically identified as essential contractor services by the functional commander or civilian equivalent.

(b) Contractors who provide Government-determined essential contractor services shall provide a written plan to be incorporated in the contract to ensure the continuation of these services in crisis situations. Contracting officers shall consult with a functional manager to assess the sufficiency of the contractor-provided written plan. Contractors will activate such plans only during periods of crisis, as authorized by the contracting officer, who does so at the direction of the appropriate functional commander or civilian equivalent.

(c) The contracting officer shall follow the procedures at PGI 207.105 (b)(20)(C) in preparing an acquisition plan.

237.7603 Solicitation provision and contract clause.

(a) Use the clause at 252.237-7023 , Continuation of Essential Contractor Services in all solicitations and contracts for services that are in support of mission-essential functions.

(b) Use the provision at 252.237-7024 , Notice of Continuation of Essential Contractor Services in all solicitations for services that include the clause 252.237-7023 .

Subpart 237.77 - COMPETITION FOR RELIGIOUS-RELATED SERVICES

237.7700 Scope of subpart.

This subpart provides policy and guidance for the acquisition of religious-related services to be performed on a United States military installation in accordance with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

237.7701 Definition. As used in this subpart—

“Nonprofit organization” means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

237.7702 Policy.

(a) A nonprofit organization shall not be precluded from competing for a contract for religious-related services to be performed on a United States military installation.

(b) See 219.270 when an acquisition for religious-related services to be performed on a United States military installation is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

NO DFARS TEXT

Subpart 237.78 - TRANSFER AND ADOPTION OF MILITARY ANIMALS

237.7800 Scope of subpart.

This subpart implements 10 U.S.C. 2387, which requires, under certain circumstances, the transfer

of a contract working dog to the Department of the Air Force, 341st Training Squadron, for veterinary screening and care in accordance with 10 U.S.C. 2583.

237.7801 Definition.

As used in this subpart—

Contract working dog means a dog that—

(1) Performs a service for DoD pursuant to a contract; and

(2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

237.7802 Policy.

(a) In accordance with 10 U.S.C. 2387, DoD will transfer a contract working dog to the Department of the Air Force, 341st Training Squadron, for veterinary screening and care after the service life of the dog has terminated.

(b) The service life of a contract working dog may be terminated if—

(1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(c) A contract working dog that has reached the end of its service life will be transferred for care, reclassification as a military animal, and placement for adoption in accordance with 10 U.S.C 2583.

237.7803 Procedures.

Contracting officers, at the request of the requiring activity, may issue a determination that the service life of a contract working dog has terminated if the conditions in 237.7802 Policy.(b) have been documented by the requiring activity.

237.7804 Contract clause.

Use the clause at 252.237-7027 Transfer and Adoption of Military Animals., Transfer and Adoption of Military Animals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require the services of a contract working dog.