Subpart 239.74 - TELECOMMUNICATIONS SERVICES

Parent topic: Part 239 - ACQUISITION OF INFORMATION TECHNOLOGY

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services meet the definition of information technology.

239.7401 Definitions.

As used in this subpart—

“Common carrier” means any entity engaged in the business of providing telecommunications services which are regulated by the Federal Communications Commission or other governmental body.

“Foreign carrier” means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by a U.S. governmental regulatory body and not doing business as a citizen of the United States, providing telecommunications services outside the territorial limits of the United States.

“Governmental regulatory body” means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the State authority. The following are not “governmental regulatory bodies”—

(1) Regulatory bodies whose decisions are not subject to judicial appeal; and

(2) Regulatory bodies which regulate a company owned by the same entity which creates the regulatory body.

“Long-haul telecommunications” means all general and special purpose long-distance telecommunications facilities and services (including commercial satellite services, terminal equipment, and local circuitry supporting the long-haul service) to or from the post, camp, base, or station switch and/or main distribution frame (except for trunk lines to the first-serving commercial central office for local communications services).

“Noncommon carrier” means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

“Securing,” “sensitive information,” and “telecommunications systems” have the meaning given in the clause at 252.239-7016 , Telecommunications Security Equipment, Devices, Techniques, and Services.

“Telecommunications” means the transmission, emission, or reception of signals, signs, writing,

images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

“Telecommunications services” means the services acquired, whether by lease or contract, to meet the Government's telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) *Acquisition.* DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(1) On a competitive basis, except when acquisition using other than full and open competition is justified;

(2) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices; and

(3) Making provision in telecommunications services contracts for adoption of—

(i) FCC approved practices; or

(ii) The generally accepted practices of the industry on those issues concerning common carrier services where—

(A) The governmental regulatory body has not expressed itself;

(B) The governmental regulatory body has declined jurisdiction; or

(C) There is no governmental regulatory body to decide.

(b) *Security.*

(1) The contracting officer shall ensure, in accordance with agency procedures, that purchase requests identify—

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this section, contractors and subcontractors shall normally provide all required property, to include telecommunications security equipment or related devices, in accordance with FAR 45.102. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) The head of the agency may authorize provision of the necessary property as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.102(b) are met.

(c) *Foreign carriers*. For information on contracting with foreign carriers, see PGI 239.7402 (c).

(d) *Long-haul telecommunications services*. When there is a requirement for procurement of long-haul telecommunications services, follow PGI 239.7402 (d).

239.7403 Reserved.

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239.7405 Delegated authority for telecommunications resources.

The contracting officer may enter into a telecommunications service contract on a month-to-month basis or for any longer period or series of periods, not to exceed a total of 10 years. See PGI 239.7405 for documents relating to this contracting authority, which the General Services Administration has delegated to DoD.

239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

(a) Common carriers are not required to submit certified cost or pricing data before award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 3703. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers shall obtain sufficient data to determine that the prices are reasonable in accordance with FAR 15.403-3 or 15.403-4. See PGI 239.7406 for examples of instances where additional data may be necessary to determine price reasonableness.

239.7407 Type of contract.

When acquiring telecommunications services, the contracting officer may use a basic agreement (see FAR 16.702) in conjunction with communication service authorizations. When using this method, follow the procedures at PGI 239.7407 .

239.7408 Special construction.

239.7408-1 General.

(a) “Special construction” normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements. This may include—

(1) Moving or relocating equipment;

(2) Providing temporary facilities;

(3) Expediting provision of facilities; or

(4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR Part 36 for acquisition of “special construction.”

(c) Special construction costs may be—

(1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer shall require a detailed special construction proposal. Analyze all special construction proposals to—

(1) Determine the adequacy of the proposed construction;

(2) Disclose excessive or duplicative construction; and

(3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. The contracting officer must approve special construction charges before final payment.

239.7408-2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR Subpart 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction, alteration, or repair (as 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.

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.

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) 252.239-7007 , Cancellation or Termination of Orders.

(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 basic or alternate of the clause at 252.239-7013 , Term of Agreement and Continuation of Services, in basic agreements for telecommunications services.

(1) Use the basic clause in basic agreements that do not supersede an existing basic agreement with the contractor.

(2) Use the alternate I clause in basic agreements that supersede an existing basic agreement with the contractor. Complete paragraph (c)(1) of the clause with the basic agreement number, date, and contacting office that issued the basic agreement 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.