

cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

(g) *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.* (1) DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

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

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

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

(A) FCC approved practices; or

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

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

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

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

(2) DoD's unique consumer needs in both volume and technology require DoD to participate actively in the rule making process of cognizant governmental regulatory bodies. DoD also must work with the government regulatory bodies and common carriers to be sure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. DoD should make every effort to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the DoD's position in advance.

(3) If actions do not produce reasonable or lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, DoD should litigate. All contracts with the regu-

latory bodies should be through counsel under department/agency and Defense Information Systems Agency procedures.

(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 subsection, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with FAR part 45. 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) When the contractor or subcontractor does not meet ownership eligibility conditions, the head of the agency may authorize provision of the necessary facilities as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.303 are met.

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239.7403 Regulatory bodies.

The FCC and other governmental regulatory bodies publish rules and

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regulations on the operations of common carriers and prescribe accounting principles to use to establish rates.

239.7404 Foreign carriers.

(a) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business. In many countries, an international agreement with the host country sets guidelines for acquiring communication services. In some countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for telecommunications services.

(b) Contracts for telecommunications services in foreign countries should describe rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD should pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(c) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

239.7405 Multiyear contracting authority for telecommunications resources.

(a) The General Services Administration (GSA) has exclusive multiyear contracting authority for telecommunications resources. However, GSA may delegate this authority in certain instances (see Federal Property Management Regulations (FPMR) 101-35.6).

(b) In accordance with FPMR 101-35.6, executive agencies may enter into multiyear contracts for telecommunications resources if—

(1) The agency notifies GSA prior to using GSA's multiyear contracting authority;

(2) The contract life, including options, does not exceed 10 years; and

(3) The agency complies with OMB budget and accounting procedures relating to appropriated funds.

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239.7406 Cost or pricing data and information other than cost or pricing data.

(a) Common carriers are not required to submit 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. 2306a. 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 information to determine that the prices are reasonable. For example, cost or pricing data, if required in accordance with FAR 15.403-4, or information other than cost or pricing data, if required in accordance with FAR 15.403-3, may be necessary to support the reasonableness of—

(1) Nontariffed services;

(2) Special rates and charges not included in a tariff, whether filed or to be filed;

(3) Special assembly rates and charges;

(4) Special construction and equipment charges;

(5) Contingent liabilities that are fixed at the outset of the service;

(6) Proposed cancellation and termination charges under the clause at 252.239-7007, Cancellation or Termination of Orders—Common Carriers, and reuse arrangements under the clause at 252.239-7008, Reuse Arrangements;

(7) Rates contained in voluntary tariffs filed by nondominant common carriers; or

(8) A tariff, whether filed or to be filed, for new services installed or developed primarily for Government use.

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