Subpart 241.5—Solicitation Provision and Contract Clauses

241.501 Solicitation provision and contract clauses.

241.501–70 Additional clauses.


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;
(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.


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 com-
pliance is not a substitute for the proce-
dures 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 esti-
mated labor cost of installing and re-
moving 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 prece-
dence for contractual treatment of con-
nection 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 connec-
tion charge, less any net salvage mate-
rial costs. Use of a termination liabil-
ity instead of a connection charge re-
quires 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 pro-
viding up-front funding. The contract
should provide for refund of the con-
nexion charge within five years unless
a longer period or omission of the re-
fund 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 ini-
tiation charges, a contribution in aid
of construction, membership fees, and
charges required by the supplier’s rules
and regulations to be paid by the cus-
tomer. If possible, consider sharing
with other Government users the
use of (and costs for) facilities when
large nonrefundable charges are re-
quired.

(2) Construction and labor require-
ments. Follow the procedures at PGI
241.202(2) for construction and labor re-
quirements 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 sep-
parate contract.

[71 FR 3417, Jan. 23, 2006]

Subpart 241.5—Solicitation
Provision and Contract Clauses

241.501 Solicitation provision and con-
tract clauses.

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

(2) Use a clause substantially the
same as the clause at FAR 52.241–8,
Change in Rates or Terms and Condi-
tions of Service for Unregulated Serv-
ices, when the utility services to be
provided 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 cred-
its, connection charge credits, or ter-
mination 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.