

for inspections, audits, investigations, , and similar authorized activities.

[80 FR 51743, Aug. 26, 2015, as amended at 81 FR 72999, Oct. 21, 2016; 86 FR 59871, Oct. 29, 2021]

**239.7602-2 Required storage of data within the United States or outlying areas.**

(a) Cloud computing service providers are required to maintain within the 50 states, the District of Columbia, or outlying areas of the United States, all Government data that is not physically located on DoD premises, unless otherwise authorized by the authorizing official, as described in DoD Instruction 8510.01, in accordance with the SRG.

(b) The contracting officer shall provide written notification to the contractor when the contractor is permitted to maintain Government data at a location outside the 50 States, the District of Columbia, and outlying areas of the United States. See PGI 239.7602-2 for additional guidance.

[80 FR 51743, Aug. 26, 2015, as amended at 81 FR 72999, Oct. 21, 2016; 86 FR 59871, Oct. 29, 2021]

**239.7603 Procedures.**

Follow the procedures relating to cloud computing at PGI 239.7603.

[80 FR 74695, Nov. 30, 2015]

**239.7604 Solicitation provision and contract clause.**

(a) Use the provision at 252.239-7009, Representation of Use of Cloud Computing, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services.

(b) Use the clause at 252.239-7010, Cloud Computing Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services.

[80 FR 51743, Aug. 26, 2015. Redesignated at 80 FR 74695, Nov. 30, 2015; 88 FR 6588, Jan. 31, 2023]

**PART 241—ACQUISITION OF UTILITY SERVICES**

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AUTHORITY: 41 U.S.C. 1303 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;

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

(C) 10 U.S.C. 2917 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.

[63 FR 11539, Mar. 9, 1998, as amended at 87 FR 15818, Mar. 18, 2022]

**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) The contracting officer may enter into an energy savings contract under 10 U.S.C. 2913 for a period not to exceed 25 years.

(3) See 217.174 for authority to enter into multiyear contracts for electricity from renewable energy sources.

(4) 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; 76 FR 58155, Sept. 20, 2011; 81 FR 28734, May 10, 2016]

**Subpart 241.2—Acquiring Utility Services****241.201 Policy.**

(1) DoD, as a matter of comity, generally complies with the current regu-

lations, 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 certified 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, as amended at 77 FR 76940, Dec. 31, 2012]

**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.