

## 239.7102-2

current policies, procedures, and statutes, to include—

- (1) The National Security Act;
- (2) The Clinger-Cohen Act;
- (3) National Security Telecommunications and Information Systems Security Policy No. 11;
- (4) Federal Information Processing Standards;
- (5) DoD Directive 8500.1, Information Assurance; and
- (6) DoD Instruction 8500.2, Information Assurance Implementation.

(b) For all acquisitions, the requiring activity is responsible for providing to the contracting officer—

- (1) Statements of work, specifications, or statements of objectives that meet information assurance requirements as specified in paragraph (a) of this subsection;
- (2) Inspection and acceptance contract requirements; and
- (3) A determination as to whether the information technology requires protection against compromising emanations.

### **239.7102-2 Compromising emanations—TEMPEST or other standard.**

For acquisitions requiring information assurance against compromising emanations, the requiring activity is responsible for providing to the contracting officer—

- (a) The required protections, *i.e.*, an established National TEMPEST standard (*e.g.*, NACSEM 5100, NACSIM 5100A) or a standard used by other authority;
- (b) The required identification markings to include markings for TEMPEST or other standard, certified equipment (especially if to be reused);
- (c) Inspection and acceptance requirements addressing the validation of compliance with TEMPEST or other standards; and
- (d) A date through which the accreditation is considered current for purposes of the proposed contract.

### **239.7103 Contract clause.**

Use the clause at 252.239-7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

## 48 CFR Ch. 2 (10-1-06 Edition)

### **Subpart 239.72—Standards**

#### **239.7201 Solicitation requirements.**

Contracting officers shall ensure that all applicable Federal Information Processing Standards are incorporated into solicitations.

[71 FR 39011, July 11, 2006]

### **Subpart 239.73 [Reserved]**

### **Subpart 239.74— Telecommunications Services**

#### **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.

[62 FR 1060, Jan. 8, 1997, as amended at 71 FR 39011, July 11, 2006]

#### **239.7401 Definitions.**

As used in this subpart—

(a) *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.

(b) *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.

(c) *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.

(d) *Noncommon carrier* means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

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

(f) *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.

(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.

[56 FR 36429, July 31, 1991, as amended at 70 FR 67918, Nov. 9, 2005]

**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 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.

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

[56 FR 36429, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991; 62 FR 1060, Jan. 8, 1997; 71 FR 39011, July 11, 2006]

**239.7403–239.7404 [Reserved]**

**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