Part 541 - Acquisition of Utility Services

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Parent topic: General Services Administration Acquisition Manual

Subpart 541.1 - General

541.100 Scope of part.

(a) This part applies to the acquisition of utility services from regulated utilities with the exception of section 541.202-1, which covers acquisition planning for deregulated utilities.

(b) Acquisitions from deregulated suppliers for natural gas and/or electricity shall use the competitive policies and procedures as prescribed in part 512.

541.101 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 that has the power to fix, establish, or control the rates and services of utility suppliers.

541.103 Statutory and delegated authority.

Proceedings before Federal and state regulatory bodies shall be coordinated through the Public Buildings Service, Office of Facilities Management, Energy Division, in addition to any other GSA office as directed by internal policies or procedures.

Subpart 541.2 - Acquiring Utility Services

541.201 Policy.

(a) GSA purchases utility services in a manner that is consistent with the regulations, rulings and franchise or service territories. Rates are established by independent regulatory bodies. These Tariff rates:

(1) Are considered “prices set by law or regulation”; and

(2) Are sufficient to set prices without obtaining cost or pricing data (see FAR 15.403-1(c) (2)).

(b)FAR Deviation. Notwithstanding the policy as set forth at FAR 41.201(b), GSA is exempt from the requirement to acquire a bilateral written contract for the acquisition of utility services from regulated utility providers and further exempt from the procedures listed in FAR 41.202 when acquiring such services. Instead, GSA will follow the Regulated Utility Service Procedures set forth at https://insite.gsa.gov/utilityacquisition.

(c)A bilateral written contract is not required to establish new accounts with a regulated utility service provider or to pay for services rendered by any such provider.

(d)Except as required during an emergency situation, a GSA purchase card may not be used as a payment method for any utility services. If a GSA purchase card is used during an emergency situation, the purchase card holder must inform the designated GSA budget office.

541.202 Procedures.

(a)All procedures listed in paragraphs (b) through (i) of this section do not apply to regulated utilities. Instead, GSA will follow the Regulated Utility Service Procedures set forth at https://insite.gsa.gov/utilityacquisition.

(b) Contracting officers shall perform market research and create acquisition plans in accordance with FAR 41.202 (a), (b), and (e).

(c) Acquisition plans for utility acquisitions over the simplified acquisition threshold are required for separate contracts and orders against GSA areawide contracts; this does not apply to the basic areawide contract.

(d) In accordance with 40 U.S.C. § 501(b)(1)(B) and FAR 41.103(a), a GSA order or contract for utility service cannot exceed a 10 year performance period.

(e) The statement of work for a utility contract must include the building number(s) and the

specified period of performance.

(f) The Independent Government Cost Estimate for a utility contract must include all of the following information:

(1) A cost estimate for all individual months up to the thirteenth month;

(2) The known tariff rate increases in months beyond the 13 month; and

(3) Total estimated award amount for the entire period of performance.

(g) *Federal Procurement Data System reporting for utility contact actions*.

(1) The award amount in the Federal Procurement Data System must align with any independent government cost estimate. The "Action Obligation" field must cover the first year of performance, and the "Base and All Options Value" field must cover the entire period of performance.

(2) The contracting officer must update the award amount for the contract and report the actual values in FPDS to match the new anticipated award amount based on actual costs previously obligated and any changes to the estimated value for future years halfway through the period of performance whenever the period of performance is five years or greater. The update must include actual payments to date, and a revised projection for the duration of the performance period.

(3) The contracting officer must update the award amount at the end of the entire period of performance to match the actual costs.

(h) A GSA purchase card must not be used as a payment method for any utility contract unless there are unusual circumstances or emergency situations that exist. If a GSA purchase card is used, you must inform your designated GSA budget office.

(i) Utility accounts and invoices must be monitored in accordance with the GSA Utility Program Standard Operating Procedures set forth at https://insite.gsa.gov/utilityacquisition.

541.202-1 Procedures for acquisition planning for deregulated utility supplies.

Acquisition plans are not required for delivery orders under deregulated (competitive) acquisitions for natural gas and/or electricity when all of the following criteria are met:

(a) The basic contract was entered into pursuant to a written acquisition plan.

(b) The delivery address (including the associated account number) of the order is listed in the requirements type contract.

(c) The order is issued only as a funding mechanism for the location awarded in the basic contract.

541.204 GSA areawide contracts.

(a)The existence of a GSA areawide contract for the required service and location does not necessarily mean that the subject utility provider is the only source capable of meeting the

requirement (see FAR 41.202(a) and 41.204(c)(1)). When market research and acquisition planning support ordering the entire requirement under an area-wide contract, the contracting officer may do so, but shall utilize the annual reviews required by FAR 41.401 to determine the feasibility of later entering into a competitive contract for a portion of the requirement.

(b) *FAR Deviation.*

(1)Except as may be otherwise required by the terms of the areawide contract, and notwithstanding the requirement at FAR 41.204(c)(1), a bilateral written order is not required to establish new accounts or to pay for services rendered under an areawide contract.

(2)Notwithstanding the requirement at FAR 41.204(c)(3), the contracting officer does not have to use the Standard Form 26.

(3)Instead, GSA will follow the Regulated Utility Service Procedures set forth at https://insite.gsa.gov/utilityacquisition.

Subpart 541.4 - Administration

541.401 Monthly and annual review.

(a) *Monthly reviews*. As an alternative to the requirements outlined in FAR 41.401, which requires monthly reviews of all invoices with annual values exceeding the simplified acquisition threshold, the Comptroller General decision, B-227682.2, August 16, 1989, 68 Comp. Gen. 618 (GAO) authorized GSA to use an alternative methodology to meet this requirement. The GAO decision allows for the use of statistical sampling techniques to pay and audit utility invoices. Specifically, the GAO decision requires analysis and review of any problems discovered through 3% random sampling, 15% out-of-tolerance reports and historical data of utility invoices. Contract files shall include documentation of any corrective actions taken.

(b) *Annual reviews*. In addition to the requirements of FAR 41.401, the Public Buildings Service (PBS) will provide further guidance for conducting annual reviews.

Subpart 541.5 - Solicitation Provisions and Contract Clauses

541.501 Contract clauses (FAR DEVIATION).

(a) *FAR deviation*. GSA has a deviation from FAR 52.232-19 that allows use of the clause at 552.241-70 in lieu of the FAR clause at 52.232-19. Insert the clause at 552.241-70, Availability of Funds for the Next Fiscal Year or Quarter, in lieu of the FAR clause at 52.232-19, in all utility acquisitions.

(b) *Utility services*. Insert the clause at 552.241-71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.