

Date: January 31, 2020

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: Class Deviation from Federal Acquisition Regulation (FAR) subpart 41.2, Acquiring Utility Services, and VA Acquisition Regulation (VAAR) subpart 841.2, Acquiring Utility Services

To: Heads of the Contracting Activities

**1. Purpose.** To issue a FAR class deviation in accordance with FAR 1.404, Class deviations, to provide an exception to the requirement in FAR subpart 41.2, Acquiring Utility Services, specifically FAR 41.201(b), Policy; 41.202, Procedures; and FAR 41.204(c)(1) & (c)(3), GSA areawide contracts; and to issue a VAAR class deviation in accordance with VAAR 801.404, Class deviations, to revise VAAR 841.201, Policy, to remove procedures that are duplicative of other VAAR parts.

a. FAR 41.201(b) states that agencies shall acquire utility services by a bilateral written contract, to include the clauses required by FAR 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body for acquisitions that exceed the simplified acquisition threshold (SAT). This FAR class deviation provides an exception for the VA to the requirement to use a bilateral written contract similar as implemented at other Federal agencies, including GSA, to services provided under rates approved and/or established by a regulatory body. It also deviates from existing FAR policy to effectuate related changes in the acquisition of utility services under FAR subpart 41.2, specifically 41.202 and 41.204(c)(1) & (c)(3) and relieves the mandatory requirement for VA to use GSA areawide contracts.

b. The VAAR class deviation updates agency-specific policy concerning the acquisition of utility services under VAAR subpart 841.2.

**2. Effective Date.** February 1, 2020.

**3. Expiration Date.** This deviation expires once incorporated into the VAAR or the Veterans Affairs Acquisition Manual (VAAM) or is otherwise rescinded.

**4. Applicability.** This class deviation applies to all requirements for utility services that exceed the simplified acquisition threshold, when delegated authority by the General Services Administration (GSA) to enter into utility service contracts (see FAR 41.103(b) and (c)).

**5. Current FAR and VAAR Policy:** FAR 41.201(b) states that for acquisitions that exceed the simplified acquisition threshold (SAT), agencies shall acquire utility services by a bilateral written contract, to include the clauses required by FAR 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. VA contracting officers must obtain delegated authority from GSA to enter into utility

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services contract periods over one year, but not exceeding 10 years per FAR 41.103(b) and (c), and must comply with FAR part 41. FAR 41.204(c)(3) requires the use of a Standard Form (SF) 26, Award/Contract, when executing an Authorization. VAAR subpart 841.2 and the underlying section VAAR 841.201, Policy, "As required by 801.602-71, contracting officers must submit solicitations and proposed agreements for utility services exceeding \$50,000 in total costs to the appropriate Acquisition Resources Service office for technical and legal review."

**6. Need for Deviation.** VA benchmarked a similar class deviation issued by the General Services Administration and determined the process would also benefit VA. These class deviations to the FAR and VAAR remove the unnecessary, burdensome, and costly regulatory requirements to seek bilateral written contracts for services provided by public utilities under rates approved and/or established by a regulatory body, while remaining compliant with applicable fiscal law regarding the recording of obligations at 31 U.S.C. §1501(a)(8) and to streamline the processing of a narrow group of utility services acquisitions. The risks are low as the rates are established or approved by a regulatory body.

**7. Required Action.** This deviation provides an exception VA-wide to the FAR regulatory requirement to use bilateral contract(s) when procuring regulated utility services under rates approved and/or established by a regulatory body.

**8. Additional information.** Submit questions or concerns regarding this deviation via email at [VA.Procurement.Policy@va.gov](mailto:VA.Procurement.Policy@va.gov) or (202) 632-5288.

/s/

Angela Billups, Ph.D.

Attachments

## ATTACHMENT A

### FAR DEVIATION TEXT

#### FAR Baseline: Effective January 16, 2020

- Additions to baseline made by rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by rule are indicated by ~~strikethroughs~~
- Five asterisks (\*\*\*\*\* ) indicate that there are no revisions between the preceding and following sections
- Three asterisks (\*\*\*) indicate that there are no revisions between the material shown within a section

#### Subpart 41.2—Acquiring Utility Services

##### 41.201 Policy.

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**[(b) Notwithstanding the policy as set forth at FAR 41.201(b), the Department of Veterans Affairs (VA) is exempt from the requirement to acquire utility services by a bilateral written contract from regulated providers. The heads of the contracting activities will develop internal policies and procedures.]**

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##### 41.202 Procedures.

**[The Department of Veterans Affairs is exempt from the procedures listed in FAR 41.202 when acquiring utility services.]**

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##### 41.204 GSA areawide contracts.

**(c)(1) [Notwithstanding the policy as set forth at FAR 41.204(c)(1)(i)-(ii), the Department of Veterans Affairs (VA) is exempt from the requirement to utilize GSA areawide contracts on a mandatory basis.]**

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**(c)(3) [If VA contracting officers elect to use GSA areawide contracts, VA is exempt from the requirement to use a written contract.]** The contracting officer shall execute the Authorization and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

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## Attachment B

### VAAR DEVIATION TEXT

#### VAAR Baseline: Effective January 16, 2020

- Additions to baseline made by rule are indicated by [bold text in brackets]
- Deletions to baseline made by rule are indicated by ~~strikethroughs~~
- Five asterisks ( \* \* \* \* \* ) indicate that there are no revisions between the preceding and following sections
- Three asterisks ( \* \* \* ) indicate that there are no revisions between the material shown within a section

#### Subpart 841.2 – Acquiring Utility Services

#### 841.201 Policy.

~~As required by [801.602-71](#), contracting officers must submit solicitations and proposed agreements for utility services exceeding \$50,000 in total costs to the appropriate Acquisition Resources Service office for technical and legal review.~~