

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART M841—ACQUISITION OF UTILITY SERVICES

Subpart M841.1—General

M841.101 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Indefinite term contract means a month-to-month contract for utility services that may be terminated by the Government upon proper notice. Such termination is apart from the procedures set forth in [FAR part 49](#).

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.

M841.103 Statutory and delegated authority.

(b)(1) Except as provided in paragraph (b)(2), VA contracting officers seeking to award contracts for utility services shall first obtain a delegation of authority to award such contracts from the General Services Administration (GSA).

(2) Contracting officers are not required to obtain a delegation of authority from GSA for the following:

(i) Connection charges. The Assistant Commissioner for Procurement, GSA, has delegated the Secretary of Veterans Affairs authority to enter into public utility contracts for connection charges for utility services.

(ii) Authorizations to use utilities under GSA areawide contracts (see [FAR 41.204](#)).

(iii) Contracts under one year (see [FAR 41.103\(b\)](#)).

(c) Contracting officers shall submit requests for delegation of authority directly to GSA. Delegation requests may not be for contract periods in excess of ten years (40 U.S.C. 501(b)(1)(B)). (See Attachment [M841-A](#), Request for Delegation of Authority to Procure Utilities (Sample)).

(d) The authority described in [M841.103\(b\)\(2\)\(i\)](#) delegated to the Secretary is further delegated to the Senior Procurement Executive (SPE) and is further delegated to the head of the contracting activity, and to VA contracting officers within the limits of their warrants.

Subpart M841.2—Acquiring Utility Services

M841.201 Policy.

(b) Notwithstanding the policy as set forth at [FAR 41.201\(b\)](#), in accordance with a FAR Class Deviation dated January 31, 2020, the 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.

(f) VA complies with the current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(g) Rates established by an independent regulatory body—

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

(2) Are sufficient to set prices without obtaining certified cost or pricing data (see [FAR subpart 15.4](#)); and

(3) Are a valid basis to determine that prices are fair and reasonable.

(h) Compliance with the regulations, practices, and decisions of independent regulatory bodies are not a substitute for the procedures at [FAR 41.202\(a\)](#).

M841.202 Procedures.

In accordance with a FAR Class Deviation dated January 31, 2020, the VA is exempt from the procedures listed in [FAR 41.202](#) when acquiring utility services.

M841.203 GSA assistance.

(a) Notwithstanding a GSA delegation to VA of authority to contract for utility services, contracting officers may still seek assistance from GSA in accordance with [FAR 41.203\(b\)](#). This includes when contracting for connection charges (see both [FAR 41.103\(b\)](#) and [M841.103\(b\)\(2\)\(i\)](#)).

M841.204 GSA areawide contracts.

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

(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.

M841.205 Separate contracts.

(e) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(f) Requests for proposals shall state the anticipated service period in terms of months or years.

(g) Solicitations may permit offerors the choice of proposing on the basis of—

- (1) A definite term not to exceed the anticipated service period; or
- (2) An indefinite term contract.

(h) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

(1) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(2) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts, or more favorable terms and conditions.

(i) *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 as follows:

(1) No connection charge.

(2) Termination liability charge. Use when necessary to secure the required services. The liability charge must be not more than the agreed connection charge, less any net salvage material costs.

(3) 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 SPE.

(4) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, nonrecurring 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.

(j) *Installation of Government-owned distribution lines and facilities.* Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be accomplished in accordance with [FAR part 36](#).

(k) *Construction and labor requirements.* Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in [FAR 36.102](#), construction labor standards may apply (see paragraph (j)).