

41.202 Procedures.

(a) Prior to executing a utility service contract, the contracting officer shall comply with parts 6 and 7 and subsections 41.201(d) and (e) of this part. In accordance with parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:

- (1) GSA areawide contracts (see 41.204).
- (2) Separate contracts (see 41.205).
- (3) Interagency agreements (see 41.206).

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41.301(a). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C.1501(a)(8)-

(1) By issuing a purchase order in accordance with 13.302; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

(1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).

(3) Services to be furnished and the estimated annual cost.

(4) Historical record of any applicable connection charges.

(5) Historical record of any applicable ongoing capital credits.

(6) A copy of the applicable rate schedule.

(e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral contract.

Parent topic: Subpart 41.2 - Acquiring Utility Services