

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAM Case 2020-G517, Regulated Utilities Contract Exemption

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM) to streamline requirements for regulated utility contracts.
2. Background. In the regulated environment, utility companies have exclusive control of the market which limits competition to one source (a monopoly). The applicable utility regulatory body (such as a public utility commission, or a municipality board) governs the regulated utility in areas such as service reliability, safety and reasonableness of tariffs. The regulatory body has broad authority for the supervision and regulation of activities of public utility companies. In addition to setting utility rates, the regulatory body collects and maintains records and reports of public utility companies, reviews plans for service, audits financial records, and enforces rules and regulations.

SPE memorandum SPE-2015-11-17 was issued in November 2015 in order to issue a class deviation to exempt regulated utility contracts from the requirement to enter past performance evaluations into the Contractor Performance Assessment Reporting System (CPARS). The collection and review of past performance information for these non-competitive contracts is not meaningful and provides little to no benefit for future procurements.

In addition, class deviation CD-2019-06 was issued in March 2019 in order to provide an exception for regulated utilities to FAR 41.201(b) which requires agencies to obtain a bilateral contract for utility services over the simplified acquisition threshold. Based on 31 U.S.C. § 1501 (a)(8) and opinions from the Government Accountability Office (GAO)¹, obligations may be recorded simply on the basis of utility services actually performed. The procedures set forth at FAR 41.202 are not necessary in order to comply with applicable fiscal law regarding the recording of obligations. To the contrary, following these additional procedures has increased GSA's reporting risk due to

¹ 34 Comp. Gen. 459, 462 (1955); see also B-287619, July 5, 2001; Funding of Maintenance Contract Extending beyond Fiscal Year, 8-259274, May 22, 1996.

disparities between contract and financial system data, and has created unnecessary administrative burden.

This GSAM change incorporates the guidance for regulated utilities exemptions found in these policies into GSAM Part 541 and Part 542.

3. Effective date. September 3, 2021.
4. Explanation of changes. This amendment includes non-regulatory changes only. For full text changes of the amendment see Attachment A, GSAM Line-In/Line-Out Text.

This amendment revises the language of the GSAM as summarized below:

GSAM 541.1 (General)

- Amends section 541.101 Definitions. Revised to remove definitions for “local regulated utility” and “tariff regulated utility” as they are not necessary.
- Adds section 541.103 Statutory and delegated authority. This new section incorporates the statutory authority for GSA to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies.

GSAM 541.2 (Acquiring Utility Services)

- Amends subsection 541.201 Policy. Incorporates FAR deviation text to provide an exemption from the requirement to execute a bilateral written contract for the acquisition of utility services from regulated utility providers, exempts regulated utility contracts from the procedures listed in FAR 41.202, and clarifies procedures for the use of purchase cards for utility services.
- Amends section 541.202 Procedures. Clarifies that the procedures listed in 541.202 do not apply to regulated utilities. Specific guidance and procedures for regulated utilities can be found on GSA’s Acquisition Portal at <https://insite.gsa.gov/utilityacquisition>.
- Amends section 541.204 GSA areawide contracts. Incorporates FAR deviation text to clarify that a bilateral written order and Standard Form 26 are not required for regulated utilities.

GSAM 542.15 (Contractor Performance Information)

- Adds section 542.1502 Policy. This new subsection provides guidance to indicate that past performance evaluations for regulated utility contracts and orders procured on a non-competitive basis in accordance with FAR Part 41 are not required to be entered into CPARS. Also, performance issues shall be reported directly to the governing regulatory bodies as described in FAR 41.103(a)(1).
5. Cancellations. SPE Memo SPE-2015-11-17 and Class Deviation CD-2019-06 are hereby cancelled.
 6. Point of contact. For clarification of content, contact Clarence Harrison Jr, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov.

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GSAM Case 2020-G517
TAB A – GSAM Text, Line-In/Line-Out

GSAM Baseline: Change 132 effective 07/26/2021

- 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 subsection
- Regulatory GSAR language is indicated by shaded text
- Non-regulatory GSAM language is indicated by unshaded text

Part 541 —Acquisition of Utility Services

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 GSAM-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.

~~“Local regulated utility” means a utility controlled by a body that regulates a utility which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.~~

~~“Tariff regulated utility” means a utility regulated by an independent regulatory body.~~

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

[c](b) 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](e) 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](d) The statement of work for a utility contract must include the building number(s) and the specified period of performance.

[f](e) 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](f) *Federal Procurement Data System reporting for utility contract 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](g) 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](h) Utility accounts and invoices must be monitored in accordance with the GSA Utility Program Standard Operating Procedures ~~which can be found on GSA's Acquisition Portal~~ **[set forth]** at <https://insite.gsa.gov/acquisitionportal> **[https://insite.gsa.gov/utilityacquisition]**.

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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>.

~~541.206 Interagency agreements format.~~

~~When acquiring utility services for another agency the following format shall be used in accordance with 40 U.S.C. 501 (b) which clearly delineates the roles and responsibilities of the servicing and requesting agencies. (See http://www.gsa.gov/energy_library)~~

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Part 542 - Contract Administration and Audit Services

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Subpart 542.15 - Contractor Performance Information

[542.1502 Policy.

***FAR Deviation.* Past performance evaluations for regulated utility contracts and orders procured on a non-competitive basis in accordance with FAR Part 41 shall not be entered into CPARS. Performance issues shall be reported directly to the applicable independent regulatory bodies as described in FAR 41.103(a)(1).]**

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