

APD ALERT



UTILITY PROCUREMENT

Purpose

The purpose of this Alert is to inform acquisition personnel about the proper methods of procuring utilities to serve the USDA Agricultural Research Service (ARS) facilities. Federal Acquisition Regulation (FAR) Part 41 covers electricity, natural gas, and municipal water/sewer. This Alert addresses electricity and natural gas.

Background

It is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service. In some states, the retail sale of utilities is a regulated monopoly and customers must purchase utilities from the local service provider in whose territory they are located. Some states are deregulated for the sale of some or all utilities. In deregulated states, customers are also able to purchase utilities from third party providers. In this case, the utility is considered a commodity. Although provided by a third party, the utility is transported to the retail customer by the local service provider.

Authority

In accordance with FAR 41.201(b), if annual utility costs are under the Simplified Acquisition Threshold (SAT), the only requirement is to certify monthly bills from the utility (no contract/DO necessary).

In accordance with FAR 41.201(b), if annual utility costs are estimated over the SAT, a separate contract is required. ARS currently has authority to purchase utilities for any dollar value for a period of performance not to exceed one year. In the event the utility company will not sign a bilateral contract, ARS may receive utilities and be invoiced on a monthly basis (no contract) for any dollar value (See FAR 41.202(c)). The agency shall obtain a written definite and final

refusal signed by a corporate officer or other responsible official of the supplier, and transmit the document, along with statements of the reasons for the refusal and record of negotiations, to the General Services Administration (GSA) at the address specified at FAR 51.301(a).

ARS may issue a Delivery Order (DO) against a GSA areawide contract for utilities. The period of performance may exceed one year, in accordance with the terms and conditions of the areawide contract.

In accordance with FAR 41.103(c), ARS could request delegation of contracting authority from GSA to contract with utilities for periods over one year (up to ten). All requests shall be coordinated with the ARS Energy Manager located in the ARS Facilities Division. The Energy Manager shall submit the request, with all pertinent information required by FAR 41.3, the Head of the Contracting Activity Designee (HCAD) located in the Acquisition and Property Division.

Telephone and Utilities Maintenance System (TUMS)

In accordance with the Financial Management Division Bulletin 11-303, unless they cannot be separated from a Research Support Agreement, all utilities shall be entered into the Telephone and Utilities Maintenance System (TUMS) or its successor system. TUMS is used to process invoices received from vendors and submit payment on behalf of Agencies. The TUMS Procedure Manual can be found at <http://cod.nfc.usda.gov/publications/TUMS/tums.pdf>.

If for any reason, such as issuance of a new delivery order, the Utility Service Provider changes the current account number or any other invoicing information, the changes must be made in TUMS.

Tax Exemption

Assure that utility accounts have tax exempt status. ARS is an agency of the Federal Government and is exempt from taxes imposed on the purchaser by States, municipalities, and political subdivisions thereof. Usually if it is a tax levied directly on the Federal Government, the Government is immune under the Supremacy Clause of the Constitution and the doctrine of Sovereign Immunity, such as a sales tax, even if collected by the vendor. If the tax is imposed on a vendor for the privilege of doing business, usually called a gross receipts tax, the government usually pays it. (Usually vendor taxes on utilities are in the rate base and not shown on the customer's bill, but sometimes the regulatory authority permits/requires them to be treated as a pass through.) The determination is not based on the name, it is about whether the tax is levied on the utility or the customer. A fee, as distinguished from a tax, is usually a payment for which something is received in return such as an additional service.

Other Requirements

For reporting purposes, regardless of the dollar value, all utility bills must be reviewed for accuracy and records maintained for consumption and costs. Record monthly cost and consumption for each utility and water account - electricity, natural gas, fuel oil, propane,

purchased steam, purchased chilled water, domestic potable water and non-potable water. Total each one for reporting annually. Enter into automated systems as required.

Procedures for Utility Purchases over the Simplified Acquisition Threshold (SAT)

1. Contracting Officers shall issue a delivery order (DO) against existing General Services Administration (GSA) areawide contract, when available, as required by Federal Acquisition Regulation (FAR) 41.204(c)(1) unless services are available from more than one regulated supplier in which the requirement shall be competed. Although rare, there may be more than one regulated supplier.

FAR 41.204(c)(3) requires the contracting officer (CO) to execute the Authorization and attach it to the Standard Form (SF)- 26, Award/Contract, when utilizing a GSA areawide contract. Bulletin 11-303 requires all utilities to be invoiced through the Telephone and Utilities Maintenance System (TUMS) for tracking and reporting purposes. At present, TUMS is not compatible with the Integrated Acquisition System (IAS) utilized to generate funded acquisition documents such as the SF-26. Thus, ARS is unable to issue a funded contract document when utilizing the GSA areawide contracts. In this case, the CO should issue an unfunded award document defining the terms and conditions and how payment will occur.

2. In a deregulated state compete and, if more advantageous to the Government, purchase utilities through a third party contract. The GSA or DLA Energy reverse auction process may be used. The transportation of the commodity from the delivery point between the pipeline and the serving utility to the customer would still be considered a utility service and purchased accordingly through an areawide or single point contract in accordance with FAR Part 41. Under this scenario you would have two contract actions. The ARS Facilities Energy Manager and Business Service Centers will assist with 3rd party procurement of utilities.
3. Issue a separate contract (not to exceed 1 year) in accordance with FAR 41.205.
4. Purchase from a university or another government agency if located on their site. Delegated authority is not required as it is considered a “full service lease.”
5. Request assistance from GSA (FAR 41.301) to negotiate areawide contracts or single point contracts. All requests shall be coordinated with the ARS Facilities Energy Manager located in the ARS Facilities Division. The Facilities Energy Manager shall submit the request, with all pertinent information required by FAR 41.3, to the HCAD located in the Acquisition and Property Division.

Point of Contact

Acquisition Programs and Oversight Branch, E-mail at APOB@ars.usda.gov or phone at

301-504-1725.

References

FAR part 41 – <https://www.acquisition.gov/far/html/FARTOCP41.html>

GSA Areawide Contracts for ARS locations (by name of utility) on Sharepoint -
<https://arsnet.usda.gov/sites/AFM/FD/EA/Shared%20Documents/Forms/AllItems.aspx?RootFolder=%2fsites%2fAFM%2fFD%2fEA%2fShared%20Documents%2fUtilities%2fGSA%20Areawide%20Contracts%20by%20Name&View=%7bB3C34B4F%2dC211%2d48A7%2d91FE%2d3569C81BEEA7%7d>

GSA Utility Glossary -
<https://arsnet.usda.gov/sites/AFM/FD/EA/Shared%20Documents/Utilities/GSA%20Utility%20glossary/GSA%20Utilities%20Glossary.pdf>

TUMS Manual – <http://cod.nfc.usdda.gov/publications/TUMS/tums.pdf>

ECM Manual – http://cod.nfc.usda.gov/publications/ECM_AgencyDeskProcedures120208.pdf

Bulletin 11-303, Use of TUMS for Utility Payments -
<http://www.afm.ars.usda.gov/ppweb/Bulletins/2011/11-303.pdf>

Issue Date: October 2012

APD Alert No. 2013-01