

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