

SOLICITATION/CONTRACT BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CRF 350)		RATING	PAGE OF PAGES 1 30	
2. CONTRACT NO. DTMA-91-C-2012-0002		3. AWARD/ EFFECTIVE DATE 10/11/2011	4. SOLICITATION NUMBER DTMA-91-Q-2011-0026		5. SOLICITATION TYPE <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED BID (RFP)	6. SOLICITATION ISSUE DATE 09/02/2011
7. ISSUED BY U.S. DOT/ Maritime Administration Office of Acquisition MAR-380 1200 NEW JERSEY AVENUE SE MAIL STOP W-28-201 WASHINGTON DC 20590-0001 NO COLLECT CALLS			8. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE <input type="checkbox"/> SMALL BUSINESS SIC: 221310 SIZE STANDARD: \$6.50 <input type="checkbox"/> LABOR SURPLUS AREA CONCERNS <input type="checkbox"/> COMBINED SMALL BUSINESS AND LABOR SURPLUS AREA CONCERNS <input type="checkbox"/> OTHER			

9. (AGENCY USE)

10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION)
 SUPPLIES SERVICES

11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.		12. ADMINISTERED BY U.S. DOT/Maritime Administration Office of Acquisition MAR-380 1200 New Jersey Avenue, SE Mail Stop W-28-201 Washington DC 20590-0001	
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13. CONTRACTOR/ OFFEROR Water Authority of Great Neck North, Inc ATTN: KATHLEEN M. FRIEND 50 WATERMILL LANE GREAT NECK NY 11021-4235 TELEPHONE NO. DUNS NO. 012693685 <input type="checkbox"/> CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		14. PAYMENT WILL BE MADE BY MARAD A/P INVOICES P.O.BOX 25710 OKLAHOMA CITY OK 73125 SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK:	
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15. PROMPT PAY DISCOUNT

16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION
 10 U.S.C. 2304 (C) () 41 U.S.C. 253 (C) ()

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT
	Water Utility Service at the U.S. Merchant Marine Academy Delivery Location Code: 00095 U.S Merchant Marine Academy U.S. DOT/Maritime Administration 300 Steamboat Road Kings Point NY 11024-1699 USA Continued ...				

23. ACCOUNTING AND APPROPRIATION DATA 70121750MA-2012-1MRO000001-0000520700-233U0-61006600	24. TOTAL AWARD AMOUNT (FOR GOVT USE ONLY) \$0.00
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25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER <input type="checkbox"/> ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.		26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4, INCLUDING ANY ADDITIONS OR <input checked="" type="checkbox"/> CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:	
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27. SIGNATURE OF OFFEROR/CONTACTOR		28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>Judy Bowers</i>	
NAME AND TITLE OF SIGNER (TYPE OR PRINT)	DATE SIGNED	NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Judy Bowers	DATE SIGNED 10/01/11

NO RESPONSE FOR REASONS CHECKED

<input type="checkbox"/>	CANNOT COMPLY WITH SPECIFICATIONS	<input type="checkbox"/>	CANNOT MEET DELIVERY REQUIREMENT
<input type="checkbox"/>	UNABLE TO IDENTIFY THE ITEM(S)	<input type="checkbox"/>	DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
<input type="checkbox"/>	OTHER (Specify)		
<input type="checkbox"/>	WE DO	<input type="checkbox"/>	WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENTS OF THE TYPE OF ITEM(S) INVOLVED.
NAME AND ADDRESS OF FIRM (Include ZIP Code)		SIGNATURE	
		TYPE OR PRINT NAME AND TITLE OF SIGNER	

FROM:

AFFIX
STAMP
HERE

TO:
00091
U.S. DOT/ Maritime Administration
Office of Acquisition MAR-380
1200 NEW JERSEY AVENUE SE
MAIL STOP W-28-201
WASHINGTON DC 20590-0001

SOLICITATION NO. DTMA-91-Q-2011-0026

DATE AND LOCAL TIME _____

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

DTMA-91-C-2012-0002

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OF

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NAME OF OFFEROR OR CONTRACTOR

Water Authority of Great Neck North, Inc

(A) ITEM NO.	(B) SUPPLIES/SERVICES	(C) QUANTITY	(D) UNIT	(E) UNIT PRICE	(F) AMOUNT
0001	<p>FOB: Destination Period of Performance: 10/01/2011 to 09/30/2021</p> <p>Water Utililty Service at the US Merchant Marine Academy - Incremental Funding</p> <p>Accounts as follows: 03-0498-00 03-0499-00 03-0500-00 03-0518-00 05-0075-00 (Main Gate); 05-0076-00 (Main Gate); 05-0077-00 (Grenwolde Dr); 05-0078-00 (9 Grenwolde Dr); 05-0079-00 (11 Grenwolde Dr); 05-0080-00 (Commd Hse Qtrs D); 05-0081-00 (Elmridge drillifield); 05-0083-00 (1 Elmridge Rd); 05-0084-00 (Elmridge Pubwrks); 05-0085-00 (Steppingstone Ln); 05-0120-00 (Vickery Gate) 11-0087-00 11-0111-00 Requisition No: MMA-PR5207-20120001</p> <p>Accounting Info: 70121750MA-2012-1MRO000001-0000520700-233U0-61006600 \$210,000.00 (Subject to Availability of Funds)</p> <p>The total amount of award: \$210,000.00. The obligation for this award is shown in box 24.</p>	1	LS	210,000.00	0.00

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52.212-4 Contract Terms and Conditions - Commercial Items. (JUN 2010)

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders--Commercial Items. (APR 2011)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: Contracting Officer check as appropriate.

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010)(Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282)(31 U.S.C. 6101 note).

(5) 52.204-11, American Recovery and Reinvestment Act--Reporting Requirements (JUL 2010) (Pub. L. 111-5).

(6) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) (31 U.S.C. 6101 note). (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

(7) 52.219-3, Notice of Total HUBZone Set-Aside or Sole-Source Award (JAN 2011) (15 U.S.C. 657a).

(8) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(9) (Reserved)

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[](10)(i) 52.219-6, Notice of Total Small Business Set-Aside (JUN 2003) (15 U.S.C. 644).

[](ii) Alternate I (OCT 1995) of 52.219-6.

[](iii) Alternate II (MAR 2004) of 52.219-6.

[](11)(i) 52.219-7, Notice of Partial Small Business Set-Aside (JUN 2003) (15 U.S.C. 644).

[](ii) Alternate I (OCT 1995) of 52.219-7.

[](iii) Alternate II (MAR 2004) of 52.219-7.

[](12) 52.219-8, Utilization of Small Business Concerns (JAN 2011) (15 U.S.C. 637 (d)(2) and (3)).

[](13)(i) 52.219-9, Small Business Subcontracting Plan (JAN 2011) (15 U.S.C. 637(d)(4)).

[](ii) Alternate I (OCT 2001) of 52.219-9.

[](iii) Alternate II (OCT 2001) of 52.219-9.

[](iv) Alternate III (JUL 2010) of 52.219-9.

[](14) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).

[](15) 52.219-16, Liquidated Damages--Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).

[](16)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323)(if the offeror elects to waive the adjustment, it shall so indicate in its offer.)

[](ii) Alternate I (JUN 2003) of 52.219-23.

[](17) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (DEC 2010) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

[](18) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

[](19) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004)(15 U.S.C. 657 f).

[](20) 52.219-28, Post Award Small Business Program Rerepresentation (APR 2009) (15 U.S.C. 632(a)(2)).

[](21) 52.219-29, Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2011).

[](22) 52.219-30, Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (APR 2011).

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- (23) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755).
- (24) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126).
- (25) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- (26) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
- (27) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).
- (28) 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010) (29 U.S.C. 793).
- (29) 52.222-37, Employment Reports on Veterans (SEP 2010) (38 U.S.C. 4212).
- (30) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- (31) 52.222-54, Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
- (32)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (33) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).
- (34)(i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).
- (ii) Alternate I (DEC 2007) of 52.223-16.
- (35) 52.223-18, Contractor Policy to Ban Text Messaging while Driving (SEP 2010)(E.O. 13513).
- (36) 52.225-1, Buy American Act - Supplies (FEB 2009) (41 U.S.C. 10a-10d).
- (37)(i) 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act (JUN 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).
- (ii) Alternate I (JAN 2004) of 52.225-3.
- (iii) Alternate II (JAN 2004) of 52.225-3.
- (38) 52.225-5, Trade Agreements (AUG 2009) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

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(39) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(40) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150).

(41) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).

(42) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(43) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(44) 52.232-33, Payment by Electronic Funds Transfer - Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).

(45) 52.232-34, Payment by Electronic Funds Transfer - Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

(46) 52.232-36, Payment by Third Party (FEB 2010) (31 U.S.C. 3332).

(47) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

(48)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

(ii) Alternate I (APR 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

(1) 52.222-41, Service Contract Act of 1965 (NOV 2007) (41 U.S.C. 351, et seq.).

(2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(3) 52.222-43, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (SEP 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (FEB 2009) (41 U.S.C. 351, et seq.).

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[](7) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110-247).

[](8) 52.237-11, Accepting and Dispensing of \$1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records - Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (DEC 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) (Reserved)

(iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations

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Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-41, Service Contract Act of 1965 (NOV 2007) (41 U.S.C. 351, et seq.).

(ix) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009)(41 U.S.C. 351, et seq.).

(xii) 52.222-54, Employment Eligibility Verification (JAN 2009).

(xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

52.202-1 Definitions. (JUL 2004)

52.203-2 -- Certificate of Independent Price Determination (Apr 1985)

52.203-5 Covenant Against Contingent Fees. (APR 1984)

52.203-6 Restrictions on Subcontractor Sales to the Government. (SEP 2006)

52.203-7 Anti-Kickback Procedures. (OCT 2010)

52.203-8 -- Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)

52.203-10 -- Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)

52.203-11 -- Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sep 2007)

52.204-6 -- Data Universal Numbering System (DUNS) Number (Apr 2008)

52.204-7 -- Central Contractor Registration (Apr 2008)

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52.209-5 -- Certification Regarding Responsibility Matters.

As prescribed in [9.104-7\(a\)](#), insert the following provision:

Certification Regarding Responsibility Matters (Apr 2010)

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals --

(A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation); and

(C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the

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taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has [] has not [], within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of Provision)

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (DEC 2010)

52.215-2 -- Audit and Records -- Negotiation (Oct 2010)

52.215-10 -- Price Reduction for Defective Certified Cost or Pricing Data (Oct 2010)

52.215-11 -- Price Reduction for Defective Certified Cost or Pricing Data -- Modifications (Oct 2010)

52.215-12 -- Subcontractor Certified Cost or Pricing Data (Oct 2010)

52.215-13 -- Subcontractor Certified Cost or Pricing Data -- Modifications (Oct 2010)

52.216-24 -- Limitation of Government Liability.

As prescribed in [16.603-4](#) (b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

Limitation of Government Liability (Apr 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding _____ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

(End of Clause)

52.216-25 -- Contract Definitization.

As prescribed in [16.603-4](#) (b)(3), insert the following clause: **Contract Definitization (Oct 2010)**

(a) A _____ [*insert specific type of contract*] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____ [*insert specific type of proposal; (e.g., fixed-price or cost-and-fee)*] proposal, including data other than certified cost or pricing data, and certified cost or pricing data, in accordance with FAR 15.408, Table 15-2, supporting its proposal.

(b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and certified cost or pricing data*]:

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in

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paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by --

- (i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);
- (ii) All clauses required by law as of the date of the Contracting Officer's determination; and
- (iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.
(End of Clause)

52.217-8 -- Option to Extend Services.

As prescribed in [17.208\(f\)](#), insert a clause substantially the same as the following:

Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

(End of Clause)

52.217-9 -- Option to Extend the Term of the Contract.

As prescribed in [17.208\(g\)](#), insert a clause substantially the same as the following:

Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years and 6 months..

(End of Clause)

52.223-14 Toxic Chemical Release Reporting. (AUG 2003)

52.223-18 Contractor Policy to Ban Text Messaging While Driving. (SEP 2010)

52.225-13 Restrictions on Certain Foreign Purchases. (JUN 2008)

52.225-25 Prohibition on Engaging in Sanctioned Activities Relating to Iran-Certification. (SEP 2010)

52.232-19 -- Availability of Funds for the Next Fiscal Year.

As prescribed in [332.705-1\(b\)](#), insert the following clause in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract

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(a) is funded by annual appropriations and

(b) is to extend beyond the initial fiscal year (see 32.703-2(b)):

Availability of Funds for the Next Fiscal Year (Apr 1984)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

52.232-23 -- Assignment of Claims (Jan 1986)

52.232-25 -- Prompt Payment (Oct 2008)

52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration. (OCT 2003)

52.233-1 -- Disputes (July 2002)

52.233-3 Protest after Award. (AUG 1996)

52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)

52.241-2 Order of Precedence - Utilities. (FEB 1995)

52.241-3 Scope and Duration of Contract. (FEB 1995)

(a) For the period of, at most, 10 years, 6 months, the Contractor agrees to furnish and the Government agrees to purchase electricity utility service in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(c) The Contractor shall provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates.

(d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

(End of clause)

52.241-4 Change in Class of Service. (FEB 1995)

52.241-5 Contractor's Facilities. (FEB 1995)

52.241-6 Service Provisions. (FEB 1995)

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(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than [] percent slow or fast shall be deemed correct.

(2) The Contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws. All billings based on meter readings of less than [] days shall be prorated accordingly.

(b) *Meter test.* (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding [] year(s) The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than [] percent slow or fast.

(3) No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of [] percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service shall aggregate more than [] hour(s) during any billing period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

(End of clause)

52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services. (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give [*] written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

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(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service shall be made a part of this contract by the issuance of a contract modification unless otherwise specified in the contract. The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of clause)

52.241-11 Multiple Service Locations. (FEB 1995)

52.242-13 Bankruptcy. (JUL 1995)

52.243-1 -- Changes -- Fixed-Price.

As prescribed in [43.205](#)(a)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

Changes -- Fixed Price (Aug 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of Clause)

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52.244-6 Subcontracts for Commercial Items. (DEC 2010)

52.249-8 -- Default (Fixed-Price Supply and Service) (Apr 1984)

52.252-2 Clauses Incorporated by Reference. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://farsite.hill.af.mil>

(End of clause)

52.223-13 Certification of Toxic Chemical Release Reporting. (AUG 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that -

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *(Check each block that is applicable.)*

___ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

___ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

___ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

___ (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

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(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

___ (v) The facility is not located in the United States or its outlying areas.

(End of provision)

52.216-1 Type of Contract. (APR 1984)

The Government contemplates award of Fixed Price with Economic Price Adjustment contract resulting from this solicitation.

(End of provision)

52.233-2 Service of Protest. (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Judy Bowers
Contracting Officer
Department of Transportation
Maritime Administration, W28-201
Office of Acquisition
1200 New Jersey Avenue, SE
Washington, DC 20590

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

**FAR -- Part 41
Acquisition of Utility Services**

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See [41.102\(b\)](#) for services that are excluded from this part.)

41.101 -- Definitions.

As used in this part,

“Areawide contract” means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an “Authorization” form for requesting service, connection, disconnection, or change in service.

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“Authorization” means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

“Connection charge” means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

“Delegated agency” means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see [41.103\(b\)](#)).

“Federal Power and Water Marketing Agency” means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

“Franchise territory” means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

“Intervention” means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

“Multiple service locations” means the various locations or delivery points in the utility supplier’s service area to which it provides service under a single contract.

“Rates” may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, *e.g.*, facilities use charges.

“Separate contract” means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services.

“Termination liability” means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see “Connection charge”).

“Utility service” means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of Part 41 to other services (*e.g.*, rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see [37.107](#)).

41.102 -- Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to --

- (1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see [41.206](#));
- (2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency’s marketing or distribution program;
- (3) Cable television (CATV) and telecommunications services;
- (4) Acquisition of natural or manufactured gas when purchased as a commodity;

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(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned equipment and real property; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize Part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

41.103 -- Statutory and Delegated Authority.

(a) *Statutory authority.*

(1) The General Services Administration (GSA) is authorized by 40 U.S.C. 501, to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by 40 U.S.C. 501 to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DoD) is authorized by 10 U.S.C. 2304 and 40 U.S.C. 113(e)(3) to acquire utility services for military facilities.

(3) The Department of Energy (DoE) is authorized by the Department of Energy Organization Act (42 U.S.C. 7251, *et seq.*) to acquire utility services. DoE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DoD and DoE, and for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at the address specified in [41.301\(a\)](#). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has --

- (1) An established acquisition program;
- (2) Personnel technically qualified to deal with specialized utilities problems; and
- (3) The ability to accomplish its own pre-award contract review.

Subpart 41.2 -- Acquiring Utility Services

41.201 -- Policy.

(a) Subject to paragraph (d) of this section, 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.

(b) Except for acquisitions at or below the simplified acquisition threshold, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by [41.501](#), regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's

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forms and clauses to avoid the inclusion of provisions and clauses required by [41.501](#) or by statute. (See [41.202\(c\)](#) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)

(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude --

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may --

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to [41.206](#) and [17.5](#), with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, *e.g.*, consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see [41.201\(d\)](#)).

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

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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 Subpart [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.

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41.203 -- GSA Assistance.

(a) GSA will, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction.

(b) Agencies, seeking assistance shall provide upon request by GSA the information listed in [41.301](#).

41.204 -- GSA Areawide Contracts.

(a) *Purpose.* GSA enters into areawide contracts (see [41.101](#)) for use by Federal agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.

(b) *Features.*

(1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see [41.201\(d\)](#)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of subparagraph (c)(1) of this section apply.

(c) *Procedures for obtaining service.*

(1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless --

(i) Service is available from more than one supplier, or

(ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government. If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see [41.202\(a\)](#)). The determination required by subparagraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in [41.301\(a\)](#).

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplies, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier.

(3) 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

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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.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA office specified at [41.301\(a\)](#). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification.* Agencies shall provide GSA at the address specified at [41.301\(a\)](#) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

41.205 -- Separate Contracts.

(a) In the absence of an areawide contract or interagency agreement (see [41.206](#)), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:

- (1) The number of available suppliers.
- (2) Any special equipment, service reliability, or facility requirements and related costs.
- (3) The utility supplier's rates, connection charges, and termination liability.
- (4) Total estimated contract value (including costs in subparagraphs (b)(2) and (3) of this subsection).
- (5) Any technical or special contract terms required.
- (6) Any unusual characteristics of services required.
- (7) The utility's wheeling or transportation policy for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in [41.205\(b\)](#), [41.301](#), and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to [41.103](#)), may be justified, and is usually required, where any of the following circumstances exist:

- (1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service.
- (2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated;
- (3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

41.206 -- Interagency Agreements.

Agencies shall use interagency agreements (*e.g.*, consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at [17.502-2](#), The Economy Act.

Subpart 41.3 -- Requests for Assistance **41.301 -- Requirements.**

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(a) Requests for delegations of GSA contracting authority assistance with a proposed contract as provided in [41.203](#), and the submission of other information required by this part, shall be sent or submitted to the General Services Administration (GSA) region in which service is required. The names and locations of GSA regional offices are available from the:

General Services Administration
Energy Center of Expertise
301 7th Street, SW., Room 4004
Washington, DC 20407.

(b) Requests for contracting assistance for utility services shall be sent not later than 120 days prior to the date new services are required to commence or an existing contract will expire. Requests for assistance shall contain the following information:

- (1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule.
- (2) A copy of any service proposal or proposed contract.
- (3) Copies of all current published or unpublished rates of the utility supplier.
- (4) Identification of any unusual factors affecting the acquisition.
- (5) Identification of all available sources or methods of supply, an analysis of the cost-effectiveness of each, and a statement of the ability of each source to provide the required service, including the location and a description of each available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services.

(c) For new utility service requirements, the agency shall furnish the information in paragraph (a) of this section and the following as applicable:

- (1) The date initial service is required.
- (2) For the first 12 months of full service, estimated maximum demand, monthly consumption, other pertinent information (*e.g.*, demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.
- (3) Known or estimated time schedule for growth to ultimate requirements.
- (4) Estimated ultimate maximum demand and ultimate monthly consumption.
- (5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.
- (6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.
- (7) The following data concerning proposed facilities and related charges or costs:
 - (i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed

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facilities and estimated construction costs, and its rationale for the charge, *e.g.*, tariff provisions or policies.

(ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility service, the agency shall furnish GSA the information in paragraph (b) of this section and the following, as applicable:

- (1) A copy of the most recent 12-months' service invoices.
- (2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption.
- (3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption, other pertinent information (*e.g.*, demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.
- (4) Accounting and appropriation data to cover the costs for the continuation of utility services.
- (5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

Subpart 41.4 -- Administration
41.401 -- Monthly and Annual Review.

Agencies shall review utility service invoices on a monthly basis and all utility accounts with annual values exceeding the simplified acquisition threshold on an annual basis. Annual reviews of accounts with annual values at or below the simplified acquisition threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

41.402 -- Rate Changes and Regulatory Intervention.

- (a) When a change is proposed to rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.
- (b) If a change is proposed to rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal executive agencies (see [41.301](#)).
- (c) Pursuant to [52.241-7](#), Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change shall be made a part of the contract by unilateral contract modification or otherwise documented in accordance with agency procedures. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to

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avoid late payment provisions. Copies of the modification containing the approved rate change shall be sent to the agency's paying office or office responsible for verifying billed amounts (see [41.401](#)).

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at [52.241-8](#), Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

Subpart 41.5 -- Solicitation Provision and Contract Clauses
41.501 -- Solicitation Provision and Contract Clauses.

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a "substantially the same as" basis (see [52.101](#)) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations for utility services a provision substantially the same as the provision at [52.241-1](#), Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(c) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the clauses at --

- (1) [52.241-2](#), Order of Precedence-Utilities;
- (2) [52.241-3](#), Scope and Duration of Contract;
- (3) [52.241-4](#), Change in Class of Service;
- (4) [52.241-5](#), Contractor's Facilities; and
- (5) [52.241-6](#), Service Provisions.

(d) The contracting officer shall insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions --

- (1) [52.241-7](#), Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, the contracting officer shall insert in the blank space provided in the clause the name of the contracting officer. For GSA areawide contracts, the contracting officer shall insert the following: "GSA and each areawide customer with annual billings that exceed \$250,000").
- (2) [52.241-8](#), Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.
- (3) [52.241-9](#), Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use Alternate I to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (f) and (i) of this section).
- (4) [52.241-10](#), Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with or in lieu of a connection charge upon completion of the facilities.

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(5) [52.241-11](#), Multiple Service Locations (as defined in [41.101](#)), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) [52.241-12](#), Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) [52.241-13](#), Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits, consistent with the bylaws and governing documents of the cooperative.

(e) Depending on the conditions that are appropriate for each acquisition, the contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR.

Subpart 41.6 -- Forms
41.601 -- Utility Services Forms.

(a) If acquiring utility services under other than an areawide contract, a purchase order or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, shall be used.

(b) The contracting officer shall incorporate the applicable rate schedule in each contract, purchase order or modification.

Subpart 41.7 -- Formats
41.701 -- Formats for Utility Service Specifications.

(a) The following specification formats for use in acquiring utility services are available from the address specified at [41.301](#)(a) and may be used and modified at the agency's discretion:

- (1) Electric service.
- (2) Water service.
- (3) Steam service.
- (4) Sewage service.
- (5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of equipment and real property and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in Section C of the utility service solicitation and contract.

41.702 -- Formats for Annual Utility Service Review.

(a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at [41.301](#)(a) and may be used at the agency's discretion:

- (1) Electric service.
- (2) Gas service.

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(3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.