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 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 of1988, 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. 2922a (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 of1978;

(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 Com-mission.

(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 Law100-202 (see 41.201(d)).

Parent topic: Subpart 41.2 - Acquiring Utility Services