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MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

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SUBJECT: Class Deviation to Federal Acquisition Regulation (FAR) Subpart 42.15, Contractor Performance Information, in Support of Procurements Made in Accordance with FAR Part 41, Acquisition of Utility Services

1. Purpose

This memorandum issues a class deviation to exempt non-competitive, regulated utility contracts from the requirement to enter past performance evaluations into the Contractor Performance Assessment Reporting System (CPARS).

2. Background

Some utilities are regulated federally, by the states they operate in. There is no competition in these markets. Therefore, those contracts are procured on a non-competitive basis. In this circumstance, past performance matters are subject to regulatory oversight through the applicable utility commission.

In this environment, Contracting Officers (COs) file formal and informal complaints with the utility commissions when it is necessary.

The primary purpose of past performance evaluations is to ensure the contractor is held accountable for its performance and that accurate past performance data is collected and used by COs in making future source selection decisions.

In the absence of current and future competition, the collection and review of past performance information is not meaningful and provides little to no benefit for future procurements.

3. **Applicability**

This deviation applies to all regulated utility contracts and orders procured on a non-competitive basis in accordance with FAR Part 41.

This memorandum issues a class deviation to paragraph (a) of FAR 42.1502. It exempts non-competitive regulated utility contracts procured in accordance with FAR Part 41, Acquisition of Utility Services, from the requirement to enter past performance evaluations into CPARS as described in paragraph (a) of FAR 42.1502.

This exemption does not affect any other requirements for the use and recording of information in the Federal Awardee Performance and Integrity Information System (FAPIIS), such as those described in paragraph (h) of FAR 42.1503, Other contractor performance information.

COs shall continue to coordinate all proceedings with Federal and state regulatory bodies as described in FAR 41.103, including those related to performance issues, with the Energy Division, located within the Office of Facilities Management and Services Programs within the Public Buildings Service.

See Attachment A for the deviation text regarding the implementation of this class deviation.

4. **Effective Date**

Immediately.

5. **Expiration Date**

This deviation expires upon incorporation of the changes into the FAR.

6. **Point of Contact**

Questions regarding this memorandum should be directed to Ms. Jennifer Calik, Procurement Analyst, General Services Acquisition Policy Division (MVAC), at 312-353-6090 or email jennifer.calik@gsa.gov.

Appendix A: Policy Guidance for Implementation of Class Deviation

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. **[All such proceedings shall be coordinated through the Public Buildings Service, Office of Facilities Management and Services Programs, Energy Division, in addition to any internal agency office as directed by internal policies or procedures.]** GSA is authorized by 40 U.S.C. 501 to contract for utility services for periods not exceeding ten years.

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42.1502 Policy.

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[(i) Past performance evaluations for regulated utility contracts and orders procured on a non-competitive basis in accordance with FAR Part 41, Acquisition of Utility Services, are not required to be entered into CPARS. In these cases, performance issues shall be reported directly to the governing regulatory bodies as described in FAR 41.103(a)(1).

~~(i)~~ (j)] Agencies shall promptly report other contractor information in accordance with 42.1503(h).