

## 6 Key Considerations for Selling Carbon Pollution-Free Electricity to the Federal Government

Article By:

Shaunna E. Bailey

Nicholas W. Dugdale

---

In line with the goals set forth in the Federal Government's Federal Sustainability Plan, the General Services Administration ("GSA") recently issued a [Request for Information](#) ("RFI") stating its intent to acquire approximately 2,700,000 MWh of carbon pollution-free ("CFE")<sup>[1]</sup> retail electricity supply annually for a term of up to 10 years in the PJM Interconnection/Regional Transmission Operator ("PJM/RTO")<sup>[2]</sup> region. The RFI sought information from companies capable of providing CFE, including Bundled CFE<sup>[3]</sup>, to Federal Government agencies and facilities in the PJM region. The RFI noted that a solicitation could be released in the next couple of months and award(s) could be made as early as September 2024, with the first electricity flowing by mid-December 2024.

While the RFI was not a live procurement, it gave insight into the GSA's intentions for procuring CFE over the next several years in addition to giving companies that provide renewable energy the opportunity to help shape an eventual GSA solicitation.

A [similar RFI](#) was recently issued as part of the Department of Defense's ("DoD") market research to determine how best to procure approximately 260,000 MWh annually of CFE for Federal customers (both DoD and Civilian agencies) in the Electric Reliability Council of Texas ("ERCOT") competitive retail electric choice market.

Given the Federal Government's stated CFE goals, we anticipate additional RFIs and solicitations for CFE to be released in the coming months and years. Accordingly, we address below six key considerations for companies that are considering selling CFE to the Federal Government.

### 1. What is the RFI about?

The GSA is a Federal agency responsible for procuring products, services (including public utility services), and facilities for itself, other Federal agencies, and certain non-governmental organizations. This RFI was issued as part of the GSA's market research to inform acquisition planning and could result in a solicitation for one of the Federal Government's largest procurements of CFE to date. It was issued in accordance with [Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability](#) and the related [Federal Sustainability Plan](#), which

---

set a goal for the Federal Government to achieve 100% CFE by 2030, including 50% on a 24/7 basis.[4]

The RFI focused on gathering information relating to Bundled CFE (as distinct from grid-supplied CFE) that is sourced from generation resources that (i) produce CFE, (ii) were placed in service on or after October 1, 2021, either as a new resource or as new capacity at an existing resource modified to increase output, and (iii) are capable of delivering CFE to the PJM/RTO. The RFI did not distinguish between types of Bundled CFE generating resources (*i.e.*, utility-scale versus distributed generation facilities; solar versus wind).

The RFI included 27 questions that interested companies could respond to in order to provide the GSA with information regarding the availability of Bundled CFE in the PJM/RTO retail electricity market and input on how GSA should structure this procurement. The questions addressed, for example, whether the company is registered in the System for Award Management (“SAM,” as discussed below), the amount of Bundled CFE and retail electric supply the company can provide and by what date, the company’s pricing structure (including a fixed price per KWh), the company’s capability to project, track, and report how much of the load is served by hourly-matched CFE, whether the company needs a letter of intent to enter negotiations, whether the company is currently or is planning to offer power generated using domestically-manufactured solar panels,[5] and the company’s enrollment process.

## **2. Who should care?**

The Federal Government is the single largest consumer of electricity in the United States, and the procurement contemplated by this RFI would constitute one of the Federal Government’s largest-ever clean electricity purchases. Accordingly, the eventual procurement could present a significant market opportunity for clean energy producers in the PJM/RTO region that are interested in contracting with the Federal Government.

The RFI was open to all would-be respondents, and there is presently no indication that the solicitation will be restricted to certain types of bidders (although, that is a possibility depending on the responses to the RFI). However, we anticipate that the companies that will be most interested in participating in the solicitation process will already have experience operating CFE generation resources in the PJM/RTO region, and thus already hold the necessary authorization from the respective Public Service/Utility Commissions to make retail sales of electricity in the regions within PJM/RTO, whereas new market entrants may not. Other interested parties may include those companies that have previously contracted with the Federal Government for the procurement of CFE and are therefore already familiar with the heightened scrutiny and compliance obligations associated with Government contracting.[6] Given the accelerated timeline for the proposed procurement, the future solicitation could also be an attractive opportunity for developers that are seeking an offtaker for projects located in the PJM/RTO region that are already well advanced in the planning phase.

## **3. How does the GSA contract for energy?**

The GSA generally procures utility services for Federal Government agencies using *areawide public utility contracts* or *separate contracts* under the authority of 40 U.S.C. 501 and FAR Part 41.[7]

*Areawide public utility contracts* are “master” contracts between the GSA and contractor that are designed to streamline acquisitions and permit vendors to provide services under terms and conditions that apply across all Federal agencies within the vendor’s franchised territory. In other

words, GSA signs the contract, but any Federal agency in the designated utility service territory can use the agreement by executing a type of order form called an *Authorization*. Rates under areawide contracts are generally approved and/or established by a state and/or local regulatory body. However, agencies may negotiate other rates and terms and conditions (subject to approval by the regulatory body). Areawide contracts may last for a term of up to 10 years.

*Separate contracts* are utility services contracts other than GSA areawide contracts to cover acquisition of utility services that may be used when they are more beneficial to the Government.

The RFI included a draft Request for Proposal (“RFP”) with requirements for the procurement that stated the GSA “anticipates a single or multiple, one-time award(s) of a Firm-Fixed Price ten (10) year contract as a result of this solicitation.” Although the RFI anticipated that the GSA’s procurement of CFE would take place via a retail electricity contract rather than a traditional Power Purchase Agreement (“PPA”), the draft RFP did not specify the type of contract the GSA intends to use. This is likely because the GSA will take into consideration the information received in any RFI responses when formulating the actual procurement and drafting the solicitation.

#### **4. How is entering into an energy procurement contract with a Federal entity different from entering into a Power Purchase Agreement (“PPA”) or other energy agreement with a company or municipality?**

Federal Government contractors are required to comply with a complex set of statutes, regulations (*i.e.*, the Federal Acquisition Regulation or the “FAR”), rules, and contract clauses that are not typically present in commercial PPAs or other energy agreements. Because of this, there is increased scrutiny of Federal contractors’ actions, including the possibility for audits, investigations, and lawsuits for alleged fraud or other violations. In particular, before contracting with the Federal Government a prospective contractor should have a clear understanding of the False Claims Act (“FCA”), which is the primary statute used to deter fraud against the Federal Government.[8]

Companies looking to do business with the Federal Government as a prime contractor should register in the System for Award Management (or “SAM,” which is available at [www.sam.gov](http://www.sam.gov)). In addition to providing general information about the company, contractors registering in SAM are required to make a series of representations and certifications including, for example, attesting to corporate ownership (immediate and highest level owners); disclosing whether the company or any of its Principals has been indicted, convicted, or had a civil judgment rendered against them for fraud or certain criminal offenses, or have unpaid tax liability; certifying the company (including its agents and subcontractors) are not engaged in activities related to trafficking in persons and has implemented a compliance plan to prevent such activities; and certifying it does not use telecommunications equipment or services produced by certain prohibited sources. The company must also attest to the accuracy of its representations and update its registration annually or when something changes that would make any of the representations or certifications no longer accurate.

Public utility contracts with the Federal Government also include certain required contract clauses depending on the conditions of the acquisition relating to, for example, Electric Service Territory Compliance, Scope and Duration of Contract, and Change in Rates or Terms and Conditions. Additionally, Federal contractors often must make other contractual representations, such as warranting that they are providing prices or rates to their Government customer that do not exceed rates available to other customers for the same or comparable services under similar conditions.

Accordingly, Federal contractors must have robust controls in place to ensure ongoing compliance

---

with statutory, regulatory, and contractual obligations. Indeed, it is always better to establish systems and controls *before* entering into a contract to help ensure compliance and also mitigate the repercussions of any alleged noncompliance.

## **5. Why does the GSA care if my company is a small business or promotes environmental justice initiatives?**

In addition to questions about the respondents' ability to provide Bundled CFE, the RFI included questions addressing certain requirements specific to Government contracting, such as whether the company is considered a small business (as determined by its NAICS code) or engages in small business subcontracting, and whether the company promotes environmental justice initiatives. The RFI included questions about the responding company's small business status because Government agencies set certain minimum goals for small business contracts and small business subcontracting that it can meet by setting aside certain contracts so they may only be awarded to small businesses. The RFI also asked whether the company promotes environmental justice initiatives or tracks energy that comes from energy communities or energy justice communities[9] because the Federal Government has set a goal that 40 percent of overall benefits from certain Federal investments related to climate, clean energy, and affordable/sustainable housing flow to disadvantaged communities that have been disproportionately impacted by pollution. The answers to these questions likely will help the GSA determine whether it should set aside this procurement for small businesses and whether prospective contractors will be able to help the Government reach its environmental justice goals.

## **6. What should companies that want to explore contracting with the Federal Government do to prepare?**

Companies new to Federal contracting should consider conducting an in-depth compliance review to understand the current state of their structures (people, systems, technology, *etc.*) and the adjustments that will be needed to move forward into the Federal space while mitigating undue risk. Attorneys in Sheppard Mullin's Governmental Practice have deep expertise in these types of reviews and can provide additional guidance.

## **FOOTNOTES**

[1] The RFI defines CFE as "electrical energy produced from resources that generate no carbon emissions, including marine energy, solar, wind, hydrokinetic (including tidal, wave, current and thermal), geothermal, hydroelectric, nuclear, renewably sourced hydrogen and electrical energy generation from fossil resources to the extent there is active capture and storage of carbon dioxide emissions that meets Environmental Protection Agency (EPA) requirements (Sec. 603(d) of E.O. 14057)."

[2] This area includes all or part of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

[3] Bundled CFE is defined as follows: "[W]here the electricity is provided from a CFE Generation Source with the associated [Energy Attribute Certificates ("EACs")], i.e., the original associated energy attributes have not been separately sold, transferred, or retired as opposed to EACs that are procured independently from the agency's purchases of physical power, often referred to as 'unbundled' EACs."

[4] The GSA issued a similar RFI last year, which we covered [here](#).

[5] A domestically-manufactured solar panel for the purposes of the RFI is one in which 65% of the cost of all of its components are for components mined, produced or manufactured within the United States consistent with the definition of a domestic end product at Federal Acquisition Regulation (FAR) 25.003.

[6] For example, under the Obama Administration the Defense Logistics Agency Energy (“DLA”) entered into a number of renewable power procurement contracts in support of the Army, the Navy and the Air Force.

[7] Federal agencies may also acquire public utility services through interagency agreements, which do not appear to be relevant to the present RFI.

[8] 31 U.S.C. § 3729.

[9] “Energy communities,” as defined by the Inflation Reduction Act of 2022 (“IRA”), include brownfield sites, coal communities and areas with substantial extraction, processing and transport of coal, oil or natural gas and a high unemployment rate. “Energy justice communities” are generally defined as communities that have borne the brunt of air, water and soil pollution.

***Listen to this post [here](#).***

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

---

National Law Review, Volume XIV, Number 80

Source URL: <https://natlawreview.com/article/6-key-considerations-selling-carbon-pollution-free-electricity-federal-government>