

Commonwealth of Pennsylvania  
Department of General Services  
Bureau of Procurement  
555 Walnut Street, 6<sup>th</sup> Floor  
Harrisburg, PA 17101

Telephone: 1-866-768-7827  
Fax: 717-783-6241  
E-Mail: [GS-PACostars@pa.gov](mailto:GS-PACostars@pa.gov)  
Website: [www.costars.state.pa.us](http://www.costars.state.pa.us)

November 16, 2015

**SUBJECT: Assembly/Installation/Construction Activities when applicable as Ancillary Service – *COSTARS Contract Special Terms and Conditions***

The Department of General Services (“DGS”) hereby rescinds the Advisory, dated April 23, 2012, revising the *COSTARS Contract Special Terms and Conditions* to limit or remove “Installation”, when applicable as an Ancillary Service. DGS further rescinds the Clarification dated March 22, 2013, regarding the subject “Installation” when applicable as an Ancillary Service, *COSTARS Contract Special Terms and Conditions*.

In accordance with Section 34 of the *COSTARS Contract Standard Terms and Conditions*, which allows DGS “to make changes at any time to...add or delete materials or services within the scope of the Contract”, DGS is revising the Ancillary Services section of the *COSTARS Contract Special Terms and Conditions* of certain COSTARS contracts to include the new provision, “Assembly/Installation/Construction Activities”. This new provision will be released in a phased approach. Please refer to specific COSTARS contract terms and conditions including an Addendum of this date for detail, if applicable to the contract.

The impact of this change is to permit, without dollar limit, ancillary assembly, installation, and construction activities in those contracts where these services are specifically included in the scope of the contract within the Ancillary Services section of the *COSTARS Contract Special Terms and Conditions* **AND** where these services are not prohibited or limited by any existing or future laws, regulations, or policies to which the buying or selling entity is subject, including, but not limited to *The Separations Act of 1913*, *The Pennsylvania Prevailing Wage Act*, *The Steel Products Procurement Act*, and *The Public School Code of 1949*, and all lawful amendments to these statutes. Governmental entity Purchasers may not use this contract to avoid applicable legal requirements. It is the responsibility of each governmental entity Purchaser to confer with its legal counsel to determine what legal requirements or limitations apply and whether or not the COSTARS contract is appropriate for a particular purchase.

The removal or limitation of installation services from COSTARS contracts in 2012 was in response to the Department’s determination “that certain local governmental entities were using the installation provision in certain supply contracts ... circumventing required statutory provisions...” **The ultimate liability for failure to comply with all applicable statutes and regulations lies with the local governmental entity.** The Department will continue to monitor the use of these contracts to ensure that they are being used in compliance with any and all applicable statutes and regulations and take appropriate specific or general action(s) warranted by any wrongful use.

To assist in the understanding of these changes, the Department offers the following guidance and a few examples. These examples are not all-inclusive of the types of ancillary services that may or may not be provided under a COSTARS contract. The ultimate determination will be the responsibility of the government entity Purchaser and its legal counsel.

1. Under COSTARS-8, repairs and installation of a replacement roof would be an allowable use of the Assembly/Installation/Construction Activities ancillary service if: 1) the supplier indicated it offered that ancillary service in its COSTARS contract; and 2) for government entity Purchases, *The Prevailing Wage Act* is applied and enforced when the total project cost exceeds \$25,000.
2. The laying of a concrete foundation in preparation for the assembly and attachment of recreation equipment (COSTARS-14) would be an allowable use of the Assembly/Installation/Construction Activities ancillary service if: 1) the supplier indicated it offered that ancillary service in its COSTARS contract; and 2) for government entity Purchases, *The Prevailing Wage Act* is applied and enforced when the total project cost exceeds \$25,000. The assembly and attachment of the recreation equipment would be an allowable use of the Assembly/Installation/Construction Activities ancillary service. The laying of a concrete foundation *without* the purchase of the recreation equipment is *not* an allowable use of a COSTARS contract, since there is no COSTARS construction contract, and construction activities are only allowed as an ancillary service under a COSTARS supply contract. If the purchaser contracted with a separate non-COSTARS supplier to lay the concrete foundation, the cost of the purchase and installation of the recreation equipment must be added to the cost of the foundation to determine the total project cost for the purposes of *The Prevailing Wage Act* for the procurement of the concrete foundation.
3. Installation of a newly purchased alarm or security system is allowable under COSTARS-8. If internal wiring is required, it would be an allowable use of the Assembly/Installation/Construction Activities ancillary service if: 1) the supplier indicated it offered that ancillary service in its COSTARS contract; and 2) for government entity Purchases, *The Prevailing Wage Act* was applied and enforced when the total project cost exceeds \$25,000. If the installation of a sprinkler system by the seller of the sprinkler system included internal electrical work and plumbing work and the total project cost exceeds \$25,000, this would not be an allowed use under a COSTARS Contract, since it would violate *The Separations Act*. However, if the public entity procures the plumbing work from a different supplier consistent with the provisions of *The Separations Act*, the purchase and installation of the sprinkler system (not including the plumbing work) from the COSTARS supplier would be allowed. Again, if the customer is a public entity and the total project cost is in excess of \$25,000, *The Prevailing Wage Act* must be applied and enforced.
4. If a COSTARS member purchases aggregate or antiskid materials by “piggybacking” from the Aggregate & Anti-Skid Materials statewide contract, neither installation nor construction would be allowed, since the statewide contract does not allow any ancillary services.