



Utilities Privatization Lessons Learned Report



June 2003

Foreword

The Defense Reform Initiative Directive #49 directed Defense Components to privatize every government owned utility system unless security concerns required federal ownership or privatization was uneconomical. Additionally, the Office of the Secretary of Defense established a goal for the Services to complete a privatization evaluation of each utility system at every Active Duty, Reserve, and Guard installation, within the United States and overseas by September 30, 2005. Resources for those systems not able to be privatized will be programmed so that all systems are brought to a C2 (quality) status by 2010.

Privatization allows installation commanders to focus on core defense missions and functions by relieving them of activities that can be done more efficiently and effectively by others. The Army has been working the utilities privatization effort since 1991 and continues to lead the way within DoD systems. There have been a number of lessons learned as we have pursued privatization. This report provides information on some of the lessons learned.

Thank you for the diligent effort you have put into utility privatization efforts. I know the task has been hard and will continue to be so because utilities privatization is a very complex process. Your efforts have put the Army in the forefront of DoD utility privatization efforts, and have established a target for the other military services to strive for. I will continue to need your support to keep this important program forging ahead.

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Executive Summary

During the Installation Policy Board meeting on 6 September 2001, the goals of DRID #49 were replaced with two options – to fund the upgrades necessary to bring utility systems up to C2 standards by 2010, or to transfer ownership (privatize) to entities better able to improve their condition. Additionally, the Office of the Secretary of Defense established a goal for the Services to complete a privatization evaluation of each utility system at every Active Duty, Reserve, and Guard installation, within the United States and overseas by September 30, 2005.

The Army has a total of 1104 utility systems, 351 in the United States, 753 in Europe, Korea and Japan. Currently, 71 systems in the U.S. have been privatized, 27 are exempt and 196 are under negotiation/development. USAREUR continues to take an aggressive approach, privatizing systems when in compliance with international agreements, host nation laws and regulations. Resources for those systems not able to be privatized will be programmed so that all systems are brought to a C2 (quality) status by 2010.

There have been a number of lessons learned as the Army has pursued privatization.

One of the most frequently mentioned lessons learned is the importance of communication. Installations are looking for policy and guidance from their Major Commands (MACOMs)/Installation Management Agency (since October 1, 2002) (IMA) Regions and the Assistant Chief of Staff for Installation Management (ACSIM). MACOMs/IMA Regions are looking for policy and guidance from ACSIM. ACSIM is looking for audiences with the appropriate personnel at Headquarters, Department of the Army (HQDA) and other organizations to get answers to questions, to influence policy, directive, and legislative changes, and to present the best possible case for utilities privatization. Once ACSIM has obtained answers and has seen evidence of policy or legislative change, it passes this information to the field via policy and guidance memorandums and letters. Utility providers are looking for feedback on their proposals, information/training concerning the Government's solicitation process and terminology, face-to-face communications with the Government throughout the solicitation process to discuss issues and expectations.

Another lesson that was frequently mentioned at most levels (installation, Major Command, ACSIM, Corps of Engineers (COE), and utility providers) is that the Army needs good information on whichever utility system that is being privatized. Guidance has been provided from ACSIM on down to the installation that this information should be available before a RFP is ever issued.

A lesson that follows along these lines is that prospective bidders need to be allowed enough time to perform their due diligence efforts. This has been recognized and the prospective bidders are now given more time to respond to the RFP.

A lesson that came through loud and clear was that more resources were needed to complete the utilities privatization process. Resources have been provided in the

following forms: dollars, Defense Energy Support Center (DESC), COE, contract consultants, and ACSIM.

The prospective bidders complained about the numerous variations in forms of RFPs. The Army has responded by working with DESC to develop a model RFP and has decreed that it will be used on all future privatization contracts.

There were complaints from the installations that once the privatization contract is awarded; the contract administration was turned over to the installation. That was acceptable but the contract administration personnel had no experience with administering this type of contract and no training was offered. The Army has tasked DESC to develop a training course to provide to personnel who will have the responsibility to administer these types of contracts in the future.

The Army quickly became aware that tracking and monitoring the progress of the various installations in meeting the different milestones they had to meet during the utilities privatization process is a daunting task. The Army further recognized that there was not a system in existence that could effectively do this due to the number of systems being considered and the need for real-time accurate reporting which relies on the input of numerous discrete facts by each of the active members of the utility privatization team. Therefore, the Army developed a World Wide Web – based privatization tracking system (PTS) formerly known as utilities privatization tracking system, which captures up to 30 data elements/milestones, including the 4 required for reporting to OSD, can also prepare pre-set reports or custom queries. Installations can access the system to update the status of their privatization efforts for use by senior leaders at the MACOM and Department of the Army level to monitor progress and evaluate overall program execution. With PTS, Army ACSIM personnel can quickly answer Congressional and DoD questions regarding the overall status or even the status at an individual installation of the utilities privatization process.

The report also provides some of the key questions that have been asked about the utilities privatization process along with their answers. The questions have been separated into major categories that include definitions, component parts of the utilities privatization process, general questions about the process, and environmental concerns. As a note, the reader of this report will also want to check the Q & A section on the PTS at www.pts.army.mil.

General Discussion

I. Background

When Army installations were first established, the Public Works Directorates were fully staffed to operate and maintain brand new utility systems around the clock. As time passed, Operation and Maintenance, Army (OMA) funding and staffing decreased. This trend was greatly exacerbated when the post-WWII massive demobilization and then the Post-Cold War Era occurred. OMA budgets became strictly “bill payers” with some funds migrating from the Real Property Maintenance Account (RPMA) to training, national contingencies, and other emergencies. As a result the Backlog of Maintenance and Repair (BMAR) rapidly increased.



For the decade 1985-1995, RPMA funding declined an average of 4.2% per year. BMAR grew 250% during this same decade. A condition assessment tool, called the Installation Status Report (ISR), was developed and put into use. This tool showed that installation utilities were rated as “fair” to “poor” Army-wide. The ISR also showed that the un-financed requirement for utility projects totaled \$857 million across the Army.

Then came the proverbial straw that broke the camel’s back. On the evening of December 9, 1990, there was a natural gas explosion in the Army Family Housing area at Fort Ben Harrison. The resultant National Transportation Safety Board (NTSB) report was very critical of the Army. The Army was faulted for not constructing, operating, or maintaining the Fort Ben Harrison natural gas system in accordance with Army or industry standards. The NTSB concluded that natural gas utility systems on Army installations should be designed, constructed, and operated by people trained and experienced in this area and that Army systems needed to conform to federal regulations.

In 1991, the Assistant Chief of Engineers issued the first policy to move the Army towards contracting more of its utility services. Water supply, wastewater disposal, refuse collection and landfill disposal were among those services that should be purchased from local communities and private sector companies, instead of being performed in-house. The creation of the Assistant Chief of Staff for Installation Management (ASCIM) put an Army staff office in charge of practically all installation management functions. This office started the utilities privatization initiative.

In 1997, the Chief of Staff of the Army issued a memorandum to all of his major commanders stating that the 21st Century Army Installations require reliable, safe, efficient, and economically compliant utility services, but owning and operating utilities were not Army core functions. Installations should obtain such services from local or private utility companies.

The Department of Defense Reform Initiative Program capitalized on the Army's earlier privatization successes and issued Defense Reform Initiative Directive (DRID) #9 on 10 December 1997 stating that the Military Services must privatize government-owned utility systems by 1 January 2000. This was followed up on 23 December 1998 with DRID # 49. This directive recognized the complexity and scope of the program by providing a longer timeframe and establishing intermediate milestones. These milestones were:

- Decide "Go/No Go" for pursuing privatization by 30 September 2000;
- Issue RFPs for all systems determined to be economical to privatize by 30 September 2001; and

- Privatize Department of Defense utility systems by 30 September 2003 except where privatization is uneconomical or where unique security reasons require ownership by the Department.

The Army continues to lead the way within DoD in privatizing its systems and intends to meet Department of Defense's goals for evaluating and making privatization decisions on all U.S. systems by 2005. The Army has a total of 1104 utility systems, 351 in the United States, 753 in Europe, Korea and Japan. Currently, 71 systems in the U.S. have been privatized, 27 are exempt and 196 are under negotiation. USAREUR continues to take an aggressive approach, privatizing systems when in compliance with international agreements, host nation laws and regulations. To date, USAREUR has privatized 191 of 589 systems. Utilities privatization is the best and the preferred way to achieve the infrastructure modernization to meet Army needs. Contractors can provide innovations, their best practices, economies of scale and access to private funding to revitalize dilapidated utility systems. The Army has historically under funded utility systems operation, maintenance, and improvements. Each system proposing exemption for non-economical and security reasons are being reviewed by OACSIM utilizing the Utilities Privatization Economic Analysis Support Tool (UPEAST) to verify that the installation made the right call. The Office of the Secretary of the Army is the only authority to approve exemptions.

As one of the actions to help achieve the utilities privatization 30 September 2005 goal, the Army hired CALIBRE Systems, Inc. to develop this report. The objective of the report is to show in one location various lessons that have been learned since the UP process began and to present some of the key questions that have been asked along with the Army's answer. The approach was to contact various players (HQDA, IMA/MACOM, COE, IMA Regions/installation, AAA, DESC, CERL, and utility provider) in the UP process (both for privatized and exempted systems) and provide them with the opportunity to provide any lesson they believed would be useful to other folks undergoing the process.

II. Report Format

The basic report is composed of two primary sections: Lessons Learned and Questions and Answers. Under the Lessons Learned section, each lesson has a title (**bold**) followed by (in the **Lesson:** section) a general discussion of the problem and then, *in italics*, the actual lesson learned. Each lesson has a unique number assigned to it. The number (alpha numeric) is composed of an alpha (1 to 3 characters) and a numeric (5 characters) component. The legend for the alpha component follows:

AAA	U.S. Army Audit Agency
CERL	Construction Engineering Research Laboratory
FM	ASA (FM&C)
GAO	General Accounting Office
I	Installation
M	MACOM
UP	Utility Provider

The numeric portion is just a sequenced number for each alpha component.

The Question and Answer section is structured so that there is a question (**bold**) followed by an answer (regular font). This section is further broken into 29 categories (**bold, Roman numeral, and Title**).

Lessons Learned

I. Utilities Privatization Prior to Defense Reform Initiative Directives

A. General

Title: Privatization Linked to Change to New Fuel – I00001

Lesson: Doing your privatization at the same time you are changing to a new fuel is the best time. Privatizing the natural gas system was incredibly easy since there was no natural gas system on base. It was a “no brainer” to go straight to privatization. *It is realized that this is not an everyday occurrence, but if you are going to a new fuel for the utility plant strongly consider going straight to privatization.*

Title: Utility System Information – I00002

Lesson: Many of the utility providers have complained about the poor quality of information about the utility system provided in the RFP. The poor quality of data and the short timeframe to respond to the RFP doesn't allow the proposers to adequately perform due diligence. This results in a high level of risk for the proposers. *To alleviate this problem, you should collect as much information about the utility system as you possibly can before actually starting the utilities privatization process. Know the age and condition of each system component by using maintenance and repair (M&R) records, real property records, surveys, and discussions with shop personnel. Know the various owners of the system and the points of demarcation. Ensure that utility maps, as-built drawings, and the master plan are up-to-date. Know what the proposed capital upgrades are and when they are planned for accomplishment. This is a lesson learned for ongoing privatization efforts also as reported by the MACOMs (see M00002 and I00007) and a number of installations and alluded to by the utility industry.*

Title: Early Corps of Engineers Involvement – I00003

Lesson: There have been times when the utilities privatization (UP) process has gone smoothly and quickly only to be held up while finalizing easement and transfer documentation. *Installations should get the Corps of Engineers (COE) Real Estate Office involved in the process as early as possible so that easements and transfer of property will be handled in an expeditious manner and in compliance with National Environmental Protection Agency (NEPA) documentation requirements. The longer the installation waits to get the COE involved, the more time that will be needed at the end of the UP process thereby holding up the award of the contract.*

B. Acquisition

Title: Allow Utility Provider Enough Time on Installation – I00004

Lesson: This ties in with I00002. *Allow the utility providers enough time on the installation before proposals are due to become familiar with the system (condition, location, components, etc.) so that they can reduce the risk factor (increased*

comfort level). This will result in the utility providers submitting more realistic bids. Allowing utility providers spending more time on the installation has to be weighed against installation concerns about security and provision of information to contractors. Detailed maps, etc. should be provided only at the end of the process and after contractors have been screened for security risks.



Title: Best Technical Personnel on Source Selection Board – I00005

Lesson: The UP process results in a long-term contract for the installation. As with any contract, but perhaps more important due to the length of the contract, the installation wants to obtain the best

possible contractor to provide the service. *In order to ensure this happens, the installation should put their best technical people (or the best the installation can get from the Major Command (MACOM), COE, or another installation) on the Source Selection Evaluation Board (SSEB). This will hurt the installation in the short term (SSEB members' regular jobs not getting done) but will allow the installation to obtain the best possible utility provider. The use of the best folks will benefit the installation in the long run through the selected utility provider supplying efficient and reliable utility services.*

Title: Regulated Utility Provider – I00006

Lesson: As stated above the installation will have a long-term contract and will want to ensure that it gets the best possible service. This is accomplished through a well-written scope of work (SOW); well-versed functional personnel on the SSEB, and a well defined Quality Assurance Surveillance Plan (QASP). *To assist in surveillance, the installation should negotiate with a regulated utility provider if at all possible. Regulated utility providers have a Public Utility Commission (PUC) that oversees their operations and helps keep the costs in line. The PUC greatly assists the installation's efforts in receiving reliable services for a realistic price.*

II. Early Years

A. General

Title: Evaluate Privatization as an Alternative on all Maintenance, Repair, and Construction Projects – AAA00001

Lesson: Installations did not always evaluate privatization as an alternative before awarding or planning to award utility construction contracts even though privatization evaluation was an Army goal. The Army needed to enforce this goal by requiring installations to evaluate privatization as an alternative on all repair, maintenance, and new construction projects.¹⁴ *The Army has taken care of this by having each natural gas, electrical, water, and wastewater utility system evaluated for privatization. Further, AR 415-15 has been updated to specifically require that*

privatization be evaluated as an alternative in justifications for all utility construction projects.

Title: *Utilities Privatization Goals and Milestones – AAA00002*

Lesson: The Army did not establish utilities privatization goals and milestones, clearly define roles and responsibilities for the players in the UP process, or provide adequate resources for the UP studies. The Army also did not provide any emphasis on tracking the status of utilities privatization at either Major Command (MACOM) or installation level. The Army also had no controls in place to ensure the installations privatized their utility systems when it was cost-effective. This has greatly improved since FY 96.¹⁴ *The Army continues to improve in this area and has put controls in place to ensure privatization occurs when it is cost effective. The Army has instituted the Privatization Tracking System (PTS) to monitor the status of each UP project.*

Title: *Full Studies for Natural Gas Systems – AAA00003*

Lesson: Conduct of full studies for natural gas systems in poor to average condition wasn't warranted. The natural gas systems had no value and could be privatized without unnecessarily spending months to assess their worth and consequently delaying system privatization. *The Assistant Chief of Staff for Installation Management (ACSIM) issued a policy memorandum on 29 April 1997, simplifying the privatization of natural gas systems.¹⁴ The Assistant Chief of Staff for Installation Management (ACSIM) issued a policy memorandum on 30 April 2002, providing guidance on the Fair Market Value (FMV) requirements when conducting the economic analysis for utility Systems privatization. In this memorandum the following were discussed:*

In October 2001, the U. S. Army Audit Agency (USAAA) issued a report on its effort to determine the best method to satisfy the FMV requirements of 10 U.S.C. section 2688. The law requires that: "The Secretary concerned shall require as consideration for a conveyance under subsection (a) an amount equal to the FMV (as determined by the Secretary) of the right, title, or interest of the United States conveyed."

The US Army Audit Agency, Office of the General Counsel and the Assistant Secretary of the Army (Financial Management and Comptroller) have concluded that the Army has the flexibility to use any of the following for the FMV: zero value, nominal amount, appraised value, full replacement cost of the system, or a negotiated amount as consideration for the FMV of a utility system, when the economic analysis demonstrates that it is in the best interest of the government. In no case should the FMV be declared zero unless it is found advantageous to the government, as shown by the economic analysis.

Title: *Standardized UP Process – AAA00004*

Lesson: The Army needs to standardize the UP process for studying the privatization of utility systems. Technical guidance needs to be provided to installations on the appropriateness of charges on utility contracts.¹⁴ *The Army has published much information concerning the UP process and puts out technical and*

policy guidance as required. Use of Defense Energy Support Center (DESC) Standard Request For Proposal (RFP) templates, OSD and Army privatization guidance and the OSD UPEAST economic analysis model will greatly assist in standardizing the utility privatization process.

Title: *Centralized UP Approach – GAO00001*

Lesson: A centralized approach to privatization was common and offered a number of advantages. GAO suggested that Congress assign responsibility for all divestitures to a central agency in the United States as a means of developing a consistent management process. Budget rules should not dominate the divestiture decision; the decision to privatize should be made on other grounds.¹⁶ *Centralized execution of a utility privatization program is not considered to be the best use of Army resources. Because of the breadth of the program and wide variations in state and local regulations, the United States Air Force (USAF) is following a centralized program approach. There has not been enough progress made to date to evaluate this effort.*

B. Acquisition

Title: *Non-Binding Proposals – AAA00005*

Lesson: Use of non-binding proposals in cost analyses delayed completion of utility studies and may not have identified all of the competitive costs.¹⁴ Non-binding proposals slow down the study because it takes a long time for utility providers to respond. They do not have much incentive to respond since the proposal is non-binding and costs a good deal of money to prepare.²² *Non-binding proposals are no longer used in utility privatization studies.*

Title: *Contract Administration Responsibilities – AAA00006*

Lesson: The Army needs to establish and issue policies and procedures to ensure that contract administration responsibilities for utility contracts are identified and designated.¹⁴ *The Army has identified the installation as having contract administration responsibilities. When an organization other than the installation has contract administration responsibilities, this organization should designate, in writing, a Contracting Officer's Representative (COR). The COR designation letter should identify specific aspects of the contract that need monitoring. The COR designation letter should contain basic information applicable to all contracts and identify key inspection items relating to the requirements of the statement of work. Secretary of the Army, Acquisition, Logistics and Technology (SA (ALT)) has not identified this as an issue yet.*

C. Economic Analysis

Title: *Economic Analysis Model – IM00001*

Lesson: There was a definite need for an Economic Analysis (EA) model. At the beginning all players thought they would be able to use ECONPAC, developed for Military Construction, Army (MCA) projects, with some tweaking. As time went by, it was recognized that ECONPAC didn't do what was truly needed for UP. Since the Department of Defense (DoD) was already working with KPMG to

develop an EA model, the Army continued with ECONPAC and provides assistance to any installation or MACOM that requested it. Army issued general guidance on what is to be included in the “should cost”. This included general guidance on Contribution In Aid of Construction (CICA), interest charged, and when to use MCA funding. Some of these issues are still being finalized today.²² *DoD has released the Utilities Privatization Economic Analysis Support Tool (UPEAST) for use by the Services in their privatization studies. The Army has issued policy stating that the UPEAST model will be used for re-evaluation of utility systems previously declared uneconomical to privatize and on all studies that are not currently in the evaluation of proposals stage of the UP process. The UPEAST economic analysis model guidance, training, and the model itself will be updated as issues are “run to ground”.*

Title: *Economic Analysis Review – AAA00007*

Lesson: The Army needs to carefully review the economic analyses prepared either by contractor or in-house for costs and assumptions that are inaccurate or questionable.¹⁴ *The Army is reviewing each economic analysis as it is submitted and will establish a central office to review/evaluate all future required economic analyses.*

III. Major Command (MACOM)/Installation Management Agency (IMA) Region Since Defense Reform Initiative Directives

A. General

Title: *MACOM Involvement – M00001*

Lesson: MACOMs (and since October 1, 2002, Installation Management Agency Regions) should be involved from the very beginning of the utility privatization process at their installations. The amount of the involvement varies by installation but it should be enough to ensure compliance with published guidance and identification of resources required to complete the solicitation process. *MACOMs/Regions are very active players in the UP process. MACOMs/Regions have primary responsibility to execute the program and support their installations to the maximum extent possible with advice, guidance, and resources.*

Title: *Utility System Information – M00002*

Lesson: Many proposers have complained about the poor quality of utility system information provided in the RFP. The poor quality of data and the short timeframe to respond to the RFP do not allow the proposers to adequately perform due diligence. This results in a high level of risk for the proposers. *To alleviate this problem, installations should spend the funds necessary to obtain accurate maps, a complete and accurate inventory, and an accurate condition assessment of each system. This can be done in a number of ways. One way is to perform an order of magnitude inventory in-house and then structuring the Request for Proposals (RFP) so that the selected contractor would perform a 100% inventory upon contract award. A second way would be to perform all work necessary to obtain this data*

in-house. A third way would be to contract for a 100% inventory and condition assessment and to update utility maps. See I00002 and I00007 also.

Title: *Key Part of the UP Process – M00003*

Lesson: All parts of the utilities privatization process are essential; however, the development of the Scope of Work (including an accurate inventory) is the key to how good a contract you will get. If your Scope of Work is good, the percentages are high that your contract will be good. A basic, well written, easy to understand standard scope of work (SOW) that can then be modified as necessary by the installation is essential for a good contract. This is especially true at small installations that do not or may not have qualified engineers on the staff. There is no reason standard formats cannot be developed and used, but they must be written in straightforward terms that can be understood by everyone involved in developing and administering the contract. The most important part of the contract is the bid schedule. Development of an improved standard bid schedule that is understood by both parties is a resource that is definitely needed. Don't fight the utility privatization process, put your energy toward a well-written contract and bid schedule that is comprehensive, yet easy to read and understand. There are a lot of advantages to utilities privatization if you can get a good contract that controls costs.¹⁸

B. *Legislature*

Title: *Economic Analysis (EA) Legislation – M00005*

Lesson: The Army is not privatizing because it is cost effective. The Army is privatizing because it doesn't have the funds to make the necessary



repairs/replacements to bring utility systems up to standard. Also, the operation, maintenance, and recapitalization of a utility system is not a core function of the Army. *Based on that, and that alone, the Army should not be making a decision as to whether or not the utility system is going to be privatized on the economic viability of the project. The legislation requiring an Economic Analysis be done should be changed.*

C. *Policy and Guidance*

Title: *Policy and Guidance – M00006*

Lesson: ACSIM and COE need to provide consistent policy and guidance in a timely manner. Currently, definitive policies are needed on interest as an allowable contractor expense, CIAC taxes, and Cost Accounting Standards (CAS). *The Army is providing guidance and policy on a continuing basis. Policy and guidance for the program is continually evolving. The concept is complex and involves many legal issues. While not published in as timely a manner as some of the MACOMs and/or installations desire, the results are an Army coordinated product when it is issued.*

Title: *Key Information to Provide – M00007*

Lesson: Many installations have complained that they do not know what the key steps in the UP process are and how long it takes to complete the step. The installations also want information about what is different, if anything, for the different types of utility systems. *To mitigate these concerns, provide the installations with a process flow diagram of the steps in the utility privatization process and approximately when in the process each milestone should be reached. Identify what, if anything is different for the process depending on the system to be privatized. There are different federal rules and regulations for the different systems and the installations need to know what to look for in order to proceed smoothly and effectively. As additional lessons are learned during the process, provide the installations with the pertinent information.*

Title: Utilities Privatization Process Just Starting – M00008

Lesson: We need to re-look at the utility privatization process as if it was just beginning. What would the Army do if this were the case? How would things be different, if anything, from what is happening now? *If the utilities privatization process was just beginning the Army should establish a team to identify the process to be followed, develop standard templates (RFP, EA, etc.) and evaluation criteria, and identify what environmental requirements have to be completed during the process **prior** to issuing any instructions to begin privatization. The Army should set up a central cell to complete the parts of the process that are standard for all installations, regardless of their uniqueness. If the legislation isn't changed pertaining to the Economic Analysis, this central cell should do one EA for the entire Army. (This is not possible due to the different regulations in the various states.) DoD should establish a consistent process across all DoD so that suppliers dealing with different military departments would see consistent application of policy. The Army should consider centralizing the solicitation process, with each installation providing key input to the evaluation process and selection of providers for their installation. The Army should complete a few "pilot" projects and then develop a good standard Scope of Work (SOW). DoD should firmly resolve the question of what is the correct market value of the system. (There is not a standard FMV for utility systems. The FMV varies based on the condition and age of the system and what it is worth to a utility provider. See AAA00003.)*

D. Resources

Title: MACOM Funding – M00009

Lesson: MACOMs need additional funding to obtain and provide technical and contractual pre-award assistance to installations. Most installations lack the in-house expertise required for a successful transaction. MACOMs mostly agree that their installations also need additional funds for the pre-award process. *MACOMs have and continue to identify funding requirements for themselves and their installations in support of the UP process.*



Title: Resources Available for Use – M00010

Lesson: Many installations proceed in the UP process as if they have to do every step of the process themselves. The UP process is something new to every installation, is complex, and is something that will happen only once in the career of the personnel who are involved. *The installations should not try to do everything themselves, rather they should take advantage of the resources that are available for them to use. Some of these resources that are: ACSIM, Huntsville Engineering & Support Center (HESC), Defense Energy Support Center (DESC), Local CoE Districts, architect/engineer (A/E) support, and other installations which have already been through the process. Strong support from government staff privatization experts is needed by and is available to the installations at all steps in the UP process. An example of where the installation could have used some support is: a provision should have been included in the Fort Pickett electrical system privatization contract that allowed for direct purchase of wheeled power by the Government. (This would not have been possible because of the electric deregulation and bulk purchases have to be in accordance with state law.) This would have negated a bid by a cooperative, which in the Commonwealth of Virginia, is protected by state law from providing power by an outside source. If the installation had received electrical engineering support from someone who was familiar with this law, this could have been prevented.*¹⁸

IV. Utilities Privatization Process Since Defense Reform Initiative Directives

A. General

Title: Utility System Inventory – I00007

Lesson: Many proposers have complained about the poor quality of utility system inventory information provided in the RFP. *A complete detailed inventory of the utility systems being privatized is an absolute requirement. Knowledge that the as-built drawings and maps are up-to-date, knowledge of when the system and components were installed and updated, knowledge that surveys and studies that have been conducted and where they are located, and knowledge of the current condition of the system and its components is imperative. This will provide great assistance to the utility providers as well as to the preparers of the Statement of Work (SOW) and Independent Government Estimate (IGE). This is a costly effort for the installation but is worth it in the overall UP process. Also see M00002 and I00002.*

Title: Utility System Information Availability – H00001

Lesson: COE personnel were under the impression that utility system information was readily available and up to date at the installation. What they found was that the Integrated Facilities System (IFS) did not have current inventory data nor did it contain up to date or complete historical operations and maintenance (O & M) data. They also found that utility maps were not current. In short, there was not enough information available for a proposed bidder to adequately develop his/her proposal. *To compensate for this inadequate data, Huntsville Engineering Support Center (HESC) developed a two-step process. In the first step, a RFP which contained the know information about the utility system was issued. It requested proposals from*

bidder to identify the process they would use to collect the information they would need to prepare a bid on taking over the utility system and operating and maintaining it for the next 50 years. Once a proposal was accepted and a contract awarded, the actual process to collect this information took from nine months to one year. Once the data was collected and presented to the Government, the Government updated the independent government estimate (IGE), EA, and solicitation package. The contractor was allowed to update his/her proposal. A contract was then negotiated and awarded. Forces Command (FORSCOM) agreed with this methodology and actually funded it for some of their installations. ACSIM did not agree with this approach. As a result, HESC will no longer use this method. Instead, the installation will have to fund the effort to collect current information to be used in the RFP. (Development of installation data has to be paid regardless of the method used to collect the data.) Without current system data, the RFP will not be issued.

Title: Utility System Work – I00008

Lesson: The installations are discovering that they cannot get the dollars for their requirements contracts since they are going through the UP process. The installations are of the opinion that if they pay for things that need to be done with current year dollars, it will be cheaper than spreading out payments over a number of years. *Until the utilities privatization effort is complete, the installations need to continue to perform work on their utility systems. To perform the work, the MACOMs and higher headquarters have to ensure the installations get the required funds.*

Title: Outside the Installation Assistance – I00009

Lesson: Since the UP process is just one of many things occurring at the installation, there is seldom enough staff to go around. Also the UP process is going to happen once or maybe twice in the career of the personnel assigned to work on it. There are firms that can help you with the IGE, certain parts of the RFP, gathering inventory data, etc. In addition, the MACOM, DESC, HESC, ACSIM, and HQDA personnel can also provide assistance. *Use outside help for things installation personnel does not feel comfortable with or capable of doing or there is inadequate (number or trained) staff. Do not bother with getting companies or organizations to assist in the UP process if they do not have utilities experience. They will not understand what the installation is doing and can actually slow down the process. A number of installations have used C.H. Guernsey and its partners. These installations highly recommend Richard Chase & Associates as a firm whose folks know utility operations, utility law, and how the utility commissions function. Other sources of support include DESC, HNES and COE Districts. Get the support needed as early as possible in the process – make it a priority.*

Title: Installation Input – I00010

Lesson: All personnel involved in the UP process need to remember that the UP process has to have installation input to succeed. The installation cannot just turn the process over to COE or DESC and expect them to pull it together. *Therefore,*

the installation needs to pick the UP process team (installation and outside the installation) early, define each person's role, and get on with it.

Title: *Planning the Process – CER00001*

Lesson: There have been many false starts made by many participants in the UP process. These have been made at various points in the process and have helped slow down the process. *Tailored goals set at the beginning of the process provide a solid framework for addressing all UP issues. Rigorous planning and due diligence are essential for success. Rate stability (minimize change orders) is possible as long as the process is transparent and the Army knows what to negotiate for. Transition support and training is just as critical if not more as any other part of the process.*



Title: *Better Legal Support – I00011*

Lesson: One installation's local utility provider has franchise rights and informed the installation that if the installation did not award to the utility provider, the installation would become a third party and no longer qualify for bulk rates. The UP team still does not have a response from the installation,

MACOM, DESC, or COE legal staffs. This could be very expensive (approximately \$1 M per year) for the installation if the local utility provider is correct in their interpretation. *Installations either need better or more legal support. The installation needs to have a quick turn around on legal questions so that the UP process will not be hindered. Staff Judge Advocate (SJA) at the installation needs to work closely with the Office of The Judge Advocate General (OTJAG) Office of General Counsel (OGC) at Department of the Army (DA) to get complete and correct legal opinions. Provide as many facts as possible because the answer is based upon the facts provided.*

Title: *Back-UP Plan – I00012*

Lesson: Many installations have had DESC or HESC support them through the contract process and have not thought about the contract administration process. One of the things that the installation has to consider is what will be done in case of default or termination of a contractor (ENRON being the case in point). *Installation needs to have a back-up plan for utility operations in case of utility provider default or termination. This plan should be a joint effort between the utilities and contract personnel. The utility privatization process is not all doom and gloom. Many issues are being resolved after contractor default and/or bankruptcy. Each utility privatization contract includes default provisions.*

Title: *Environmental Documentation – I00013*

Lesson: Environmental documentation can become the long pole in the UP process. *The installation should get started on the environmental documentation (EBS, EIS, etc.) early and work it hard until it is completed in order for the process not to be held up at the end. 32 CFR Part 651 Environmental Analysis of Army Actions; Final Rule dated March 29, 2002 includes a categorical exemption for utilities*

privatization from certain environmental documentation requirements under the National Environmental Policy Act of 1969. We have to comply with the requirements of AR 200-2 and the National Environmental Protection Act (NEPA) throughout the process. If what you are doing is eligible for Category X, use it. If not comply with the laws and regulations.

Title: Question to Ask Throughout UP Process – I00014

Lesson: Ask yourself the following question at each step of the process. Is what we are doing in the best interest of the government? If the answer is yes, continue. If the answer is no, investigate whether the answer could be changed to yes with some work. *If there is no way to make the answer yes, then try to convince higher commands that it would be best not to proceed. The process should not continue if it will only benefit private enterprise.*

Title: Geographic Sensitive UP Process – I00015

Lesson: The utilities privatization process is geographic sensitive since each state has different laws and a different culture. The market place is governed by the State. Some states are deregulated, other states are franchised, and others have full and open competition. *Therefore the process needs to be a local issue and worked by the local folks who understand the culture and the laws. But do not hesitate to ask your Installation Management Agency (IMA) Region and DA for assistance in thorny legal issues, economic analysis results that are 180 degrees out of synch, etc.*



Title: Cost Realism, Interest Rates, Etc. – I00016

Lesson: No one in the Army truly understands borrowing, interest rates, amortization, etc. Therefore, it is very hard to analyze the data submitted by the proposers. DRM is good for reviewing first year cost and escalation rates but not the detailed stuff. No one in the Army is familiar with cost realism and there is not a regular consultant to which the installations can turn to for assistance. *Need to have a standard cost format for the IGE and the proposals so that a cost analysis can readily be performed. Always keep the IGE up-to-date. If the IGE is completed early, update it before doing the cost realism/readiness review.*



Title: UP Team – I00017

Lesson: Develop the installation UP team as soon as possible to execute the UP process. If at all possible have the Commanding General (CG) appoint and task the team with developing a UP process plan and associated time line. The installation team has to have DPW (definitely someone with utilities expertise and another person with environmental expertise), DRM,

JAG, DOC, and a COE representative with real estate (especially easements) expertise as members. If this team is pulled together early and keeps its focus (CG can ensure this) then the installation will be able to pull in other consultative assistance as required and will be able to shorten the time from start to decision. Installations have used a variety of approaches in the team effort. *One that seems to have worked well is using DOC, Legal, and DPW representatives as the day-to-day team, consulted with Real Estate and Environmental regularly, depended on Huntsville or DESC for support and the MACOM for advice, and an A&E for assistance in writing the RFP and preparing the cost estimate. UP needs to have a dedicated team and documentation and training support like has been set up for A-76 and RCI.*

Title: *Personnel with Utility Background – I00018*

Lesson: The installations and some of the MACOMS do not normally have many personnel with a utility background. *Therefore, the installations could use some technical assistance (personnel with utilities experience) during the negotiations with the proposers. Installations should seek help from IMA Regions, DA, COE Districts, or DESC.*

Title: *Metering – I00019*

Lesson: When discussing metering, the installation should look at what will be advantageous for the Government. Deciding what and where to meter is not a quick decision. For example, the installation may have buildings for which back-up power is required. Depending on the type of generation system the installation uses and where the installation needs to tie into the lines, it could create a problem. If the installation needs to tie into lines before the meter then the utility provider's permission (you no longer own the distribution lines) is required before it can be done. *The installation should decide up front which distribution lines to keep and which lines to give up and base the metering on that. To do this the installation needs to know what the future requirements are before the privatization decision. The installation should be able to fully explain its rationale for keeping any of the utility distribution lines. For water and natural gas systems it may be best to have individual meters rather than a master meter because of line loss. The Army's position is that when the utility system is privatized, the full system is privatized. If there is a need to maintain a 100% operational capability for any facility, this should be part of the Performance Work Statement (PWS) and solicitation package. If the meter is placed at the service point then the utility owns and is responsible for the lines to the meter.*

Title: *Pulling an Exemption – I00020*

Lesson: When an exemption is granted, it should not be rescinded or cancelled without a formal notice. Even when the exemption is pulled, the reasons why it was exempted and the associated problems are still there. *Need to better define what information is required for an adequate and ironclad justification for an exemption. If there is no information that will make an exemption iron-clad, then higher authority should explain the grounds for which the exemption could be rescinded or cancelled at the time the exemption is granted. Earlier in the utilities*

privatization process, requirements for exemptions were not very clearly defined. Now the requirements/rules are better defined and are subject to Army leadership decision.

Title: *Utility Generation and Security – I00021*

Lesson: All military installations should have their own generation plants on-site. The generation plants can be operated and maintained by private industry. Consider using biomass as a fuel source. *The generation plants on site will eliminate many of the security concerns except for those regarding the fuel source.*



Title: *Economic Analysis (EA) – I00022*

Lesson: Installations know that a well developed and thought out EA is required for each utility system undergoing the UP process. However, installations are not always sure what to include in the EA. One installation provided an example: currently five work years are expended on operating and maintaining the utility system under study; the Commercial Activities (CA) study of this system showed a requirement for 10 work years, and privatization study shows 10-15 work years are required. What does the installation use in the EA? Maybe the number of personnel should be based on the number of work years the utility industry uses. *Without an EA the installation is going into negotiations blind. Ensure that the EA is up to date – an EA prepared early in the process and not kept up to date is good only to someone who is new to the installation and the UP process. Installations need better guidance on what to include in an EA. UPEAST solves this problem.*

Title: *Air Force Approach – I00023*

Lesson: Both the Air Force’s initial and PATHFINDER approaches are looking to go with the local utility provider if at all possible. *The Army needs to review the Air Force approach and see if there are things they can use. When the USAF approach has enough results to review, the Army will review and evaluate for things that the Army can use.*

Title: *Utilities Privatization Is a Complex Process – I00024*

Lesson: Privatizing utility systems is a complex process and the same things do not work at each and every installation. The location (state and municipality) of the installation on which the utility system is located plays an important role in the process that is followed. The utility system’s condition, economic feasibility, and marketability have to be taken into account. The process and issues are different for local government agencies compared to “for-profit” utility companies.¹ *An installation should not perform its own UP solicitation because the UP process will happen only once in a person’s career. Centers of expertise (Huntsville and DESC) have been established and these centers should be used for the solicitation effort. This limits the amount of training required and the solicitation should proceed more smoothly and quickly as these centers gain more and more experience.*²³

Title: *Failed or Failing Utility System – I00025*

Lesson: When a utility system is failed or failing, the utility provider will build a new distribution system rather than take over the old system because of the high risk involved. *When this is the case, there is no need to conduct a detailed study on the old system – work with what it should cost for a new system.*¹ *The U.S. AAA, Office of General Counsel, and the Assistant Secretary of the Army (Financial Management and Comptroller) have concluded that the Army has the flexibility to use any of the following for the FMV: zero value, nominal amount, appraised value, full replacement cost of the system or a negotiated amount as consideration for the FMV of a utility system, when the economic analysis demonstrates that it is in the best interest of the government. (DAIM-FDF memo, Subject: Utilities Systems Privatization – Fair Market Value, dated April 30, 2002)*

Title: Utilities Privatization (UP) Is a Team Effort – I00026

Lesson: Utilities Privatization is a team approach. The installation UP team must have the installation commander and his staff's support. Ties in with I00017. *The UP Team needs to include the Director of Contracting (DOC), Director of Public Works (DPW), Judge Advocate General (JAG), Director of Resource Management (DRM), Environmental, Real Estate, Civilian Personnel Office (CPO), and the local Corps of Engineers District representatives. The labor union representative should be kept informed and involved in the UP Team's plans. The UP Team should also use resources such as OACSIM, Corps of Engineers, Defense Energy Support Center (DESC), and contractors to help the team through the process. Furthermore, several agencies and installations have issued solicitations, and in some cases completed the process. They are a good source of advice and information and could share lessons learned.*^{2,3}

Title: Utilities Privatization Transfer Team – FM00001

Lesson: There have been many different steps to starting the UP process. Based on review of these efforts for the last few years, this office feels that the following is the most appropriate way to start. *The installation as one of, if not the first one, their first steps should request their MACOM or DA support them in creating a UP Transfer Team. The installation should chair the team and have their MACOM and/or DA serve as co-chair(s). This will allow the installation to include all appropriate players (TJAG, OGS, CERL, DESC, COE, ACSIM, ASA-FM, ASA-I&E, ASALT, AAA, CAA, DOC, DPW, Real Estate, etc.) throughout the process. Personnel who will be involved in the negotiations with the contractor at the end should be part of this team from the beginning since they will gain knowledge of the total process and will be better prepared to negotiate the Army's position with the contractor. The installation should include some out of the box thinkers in the area of contract requirements definition – CERL would be a good resource for thinking through the long term effects of a contract on the installation mission. The team, with focused leadership, would have the appropriate players engaged at the appropriate time in their respective areas. The team would include on-call advisors – Office of Comptroller General (OGC), ASA (FM&C), etc., when specific issues arise that need their expertise. Further the team should use computers to share documents and information with the team members and use regular*

conference calls to keep team members apprised and working to resolve issues and maintain tasks listings with a completion focus.

Title: Privatized System Review – I00027

Lesson: An EA was performed before the utility system was privatized but we do not know if the costs are close to what was used in the EA. How good was the crystal ball that was used to estimate some of the costs that was built into the EA? *Need to review each system that has been privatized to determine what it is actually costing the taxpayer today and what it would be costing the taxpayer if it had not been privatized.*²² ***There will be post audit studies conducted after the utilities privatization process has been completed.***

Title: Real Estate Transfer – I00028

Lesson: The process to transfer real estate varies by MACOM. Land transfers only involve the land associated with the Army's treatment plants. Easements are used for the Army's distribution lines. Usually they are 15-foot easements with the utility distribution line at the center. Installations have to be careful with the easements since the utility distribution line may be in close proximity (less than seven and one-half feet) to some of their facilities. *Need to have a streamlined, standard process to transfer real estate. Need to get the proper players involved early. Need to have people who know the National Environmental Policy Act (NEPA) and what documentation it requires in order to transfer real estate. Need to get the environmental documentation (EA, EIS, etc.) started very early in the process and completed early.*²² ***Note: 32 CFR Part 651 Environmental Analysis of Army Actions; Final Rule dated March 29, 2002 includes a categorical exemption for utilities privatization from certain environmental documentation requirements under the National Environmental Policy Act of 1969. Need to have a position/policy on land transfer. A utility provider should not be given an easement that has a portion of installation facilities included in the easement. Remember that the easement for a water tower is not based on the legs of the tower but on the actual tank profile.***²³ *The Corps of Engineers (COE) Districts are developing an over all guide for the real estate transfer program. This guide will cover all areas of this program.*

Title: Dedicated UP MACOM/Region Personnel – I00029

Lesson: Installation personnel do not feel that there are enough personnel at the MACOM/Region to provide them with the assistance they need. They are always talking to a different person each time they call for assistance. *Need dedicated personnel at the MACOM/Region who can and will champion the UP process.*²³

Title: Working with Utility Provider during Transition Period – I00030

Lesson: The Government and the utility provider need to coordinate very closely during the period the operation, maintenance, and capital improvement of a utility system is being transferred from Government to utility provider personnel. *Need to work very closely with the utility provider during this transition period. Need to ensure that the actual inventory is transferred, not just what the Government thinks*

*the inventory is. Need to ensure the Government has the proper real estate documentation fully complete before it transfers the property or issues easements.*²³

Title: Fair Market Value – I00031

Lesson: Fair Market Value (FMV) can be any value and it is determined during procurement negotiations. There is no set value that is good for all systems or all installations. Installations, DESC, Huntsville all need to ask the following question when negotiating this value – What is the FMV that is in the taxpayers’ best interest? For the taxpayer it is not always the highest value that can be negotiated.²³ *The U.S. AAA, Office of General Counsel, and the Assistant Secretary of the Army (Financial Management and Comptroller) have concluded that the Army has the flexibility to use any of the following for the FMV: zero value, nominal amount, appraised value, full replacement cost of the system or a negotiated amount as consideration for the FMV of a utility system, when the economic analysis demonstrates that it is in the best interest of the government. (DAIM-FDF memo, Subject: Utilities Systems Privatization – Fair Market Value, dated April 30, 2002)*

Title: FMV and CIAC Tax – H00002

Lesson: How FMV is determined can trigger the application of the CIAC tax, thereby creating an additional cost to the contractor resulting in a higher cost to the Government. HESC is of the opinion that the Government has not been using the most appropriate way to calculate FMV. *The most appropriate way to determine the FMV and not trigger the CIAC tax is to hire a qualified appraiser to determine the business value of the system. HESC plans to use this methodology in the future.*

Title: UP Communication – I00032

Lesson: ACSIM needs to constantly communicate with the field (MACOM, DESC, COE, and installations) concerning ongoing discussions and decisions made in the Utilities Privatization arena. All concerned parties need to be kept up-to-date.



ACSIM has been issuing policy papers and conducting briefings and hosting forums to keep the field up-to-date. ACSIM is now publishing a monthly Utilities Privatization Bulletin which can be viewed on the Army’s Utilities Privatization website. ACSIM has added both a Question and Answer (Q and A) section and a Lessons Learned section to the Army Utilities Privatization Website.

Title: Communication – UP00001

Lesson: The proposed bidders normally have very little understanding of government contract operations. Meetings need to be set up between the Government and the contractor to occur monthly for the first 12-18 months prior to contract implementation and even more frequent during the first three months of contract operations. This would greatly assist each side in understanding the various parts of the contract and the expectations of both parties. The folks who attend these meetings should be prepared to stay until the issues that are to be discussed are resolved to everyone’s satisfaction. One utility provider mentioned

that he and the Government had a number of meetings that were held in the morning. Attendees were usually one utility provider representative and 10-12 Government representatives. The out of town attendees could



hardly wait for the meeting to be over so they could catch their plane and get out of town. As a result some of the issues were not resolved for many meetings.

Having some one available on the Government side to discuss the true in and outs of the Government contract with the utility provider would be very helpful. *There needs to be*

more regular communications between the Government folks (technical and contracts) who are trying to privatize their utility system and the utility provider who is trying to take over the utility system. The utility provider needs to find out who, from the Government, are going to be involved in the UP process and start communication with them early in the process. Contracting Officer can answer written questions. There are already provisions for Request for Information (RFI), industry forum, draft RFP for comment, final RFP, meetings for questions and answers (Q and A), and on-site inspections available for improved communications.

Title: *Economic Analysis Centralization – I00033*

Lesson: Need to strongly consider the centralization of economic analysis at the ACSIM or HQDA level given the fractured utilities privatization knowledge base at most installations. *Since the basic information for the EA will still come from the installations, ACSIM needs to create and provide a utilization privatization guidelines manual to help the installations populate key analysis elements. This manual will be required regardless if the economic analysis is continued to be performed at the installations or at a centralized location. The UPEAST model and associated documentation will alleviate this problem.*

Title: *Utilities Privatization Economic Analysis Support Tool (UPEAST) – I00034*

Lesson: There was a big need for a standard economic analysis model for all installations to use. *The need for an EA model was recognized and a model was developed by KPMG for DOD. The Army will use this model, called UPEAST, for its UP studies. This model will be exercised at a central Army level based on information provided by the installation. This central Army office will need some standardization on “should cost” elements in order for the UPEAST tool to be properly used. Policy letter(s) will be issued.*²³ ***OSD memo, subject: Utilities Privatization Economic Analysis Support Tool (UPEAST), dated March 11, 2002.***

Title: *Security of Privatized Utility Systems – I00035*

Lesson: Privatizing utility systems transfers the ownership and all associated responsibilities for their operations and maintenance to a new owner. This action by itself does not compromise the current level of security. Esther Lee, Chief of Staff, Ft. Lee, states that their experience with the new owner of their water system has been exceptional. She further explains: “Our Provost Marshall and Force Protection Officer went on site with Virginia American Water Company, our

contractor and identified the perimeter fencing as being deficient (i.e. holes in fence, locking mechanisms, gates) shortly after 9/11. The contractor fixed all deficiencies within a week and did a superb job. They also permitted us to do an ad hoc security survey of the site (since this is no longer our property, belongs to Virginia American Water Company) with ADT when we were looking at installing a system there. They were more than willing to assist in all aspects. Their assistance was pivotal in securing this site – a real team effort.” *There are not any security requirements that preclude the privatization of an installation utility system. Security issues should not be a privatization deal-breaker. Installations should consult with the new owners of the utility systems when developing emergency response plans. This process will clarify roles and responsibilities, and enhance the likelihood that support actions will take place as planned. Need to ensure that compliance with the provisions of Public Law 108-188, Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is maintained.*

B. Acquisition

Title: Site Visits – I00036

Lesson: A single site visit does not always provide the proposed bidder with enough time and information to properly formulate their response to the RFP. *Ensure there is provision for a sufficient number of site visit(s) for the proposed bidders to allow them to alleviate some of the uncertainty they have about the condition of the system. Let the proposed bidders visit the plants, enter manholes, pits, pumping stations, and see as much of the system as possible. This will allow them to bid a lower cost because of the lower risk. Security personnel have expressed concerns since the beginning of the utilities privatization program about allowing prospective bidders on the installation and the amount of information provided them. These concerns have expanded since the September 11, 2001 terrorist incidences. The level of information provided and the amount of time prospective utility providers are allowed on the installation must be balanced against the installation’s security requirements and level.*

Title: Solicitation Package – I00037

Lesson: There is a perceived need to consolidate/bundle a number of systems in a geographic region by size, utility type, or degree of state regulation to make them attractive for privatization. This consolidation should be done unless the consolidation will limit competition. Economies of scale are expected when systems are bundled on a regional basis or across Services.¹ Need to decide up front how to package the utility systems for solicitation and how the proposals will be evaluated. *DOC, the rest of the installation, and any other organization (MACOM, DESC, or HESC) should decide up front how to package the utility systems for solicitation (bundled or no, sole source or full competition). This decision will help define what information is required and how the information should be collected. The evaluation process after proposals are received is too complicated. There are 10 different things to review. The evaluation could be adequate with fewer things to review, thereby speeding up the process.*

Title: Standard Documentation – I00038

Lesson: Use standard documentation such as MACOM (now DESC) standard RFP and ECONPACK (now UPEAST) when they are available to develop the solicitation package and perform the economic analysis. *Start with the standard package and change it to meet the site-specific requirements. Keep the changes as few as possible and work with the personnel who developed or fully understand the standard to effect the changes.*

Title: Contract File Documentation – AAA00008

Lesson: The contract file must contain all documentation supporting the acquisition process. *Examples of the documentation that should be included in these files are: independent government estimate and any adjustments to the estimate, evaluation of the contractor's cost proposal, quality assurance surveillance plan, and the economic analysis.*



Title: Contract Adjustments – AAA00009

Lesson: Many times the negotiations with the contractor after contract award are not properly documented and filed, nor are contract terms and costs adjusted. *Ensure that contract terms and costs are adjusted to reflect agreements reached during negotiations with the contractor. Also ensure that these negotiations are documented and the record filed in the appropriate file.*

Title: Contracting Officers Representative (COR) – AAA00010

Lesson: Many times the designation letter is too general. *Ensure that the designation letter for the COR includes specific duties as detailed in the statement of work.*

Title: Contractor's Non-Performance – AAA00011

Lesson: There are times the contractor does not submit the required deliverable and no action is taken by the contracting officer. *Ensure the contracting officer takes the appropriate action for contractor non-performance. This action may be in the form of the issuance of a contractor discrepancy report (DA Form 5479R) or the withholding of payment. The COR will make a recommendation to the contracting officer.*

Title: Quality Assurance Surveillance Plan (QASP) – AAA00012

Lesson: There are times when a QASP is not developed for the contract. *A QASP should be developed and implemented that includes inspection, verification and reporting methods to establish oversight of contractor performance.*

Title: Contract Negotiations and Agreements – FM00002

Lesson: The Army has to live with the contracts that are negotiated for the next 25 to 50 years. The Army needs to ensure that these contracts reflect the best deal for the Army in an overarching sense. *The Army should ensure that these contracts provide opportunities for inclusion of the latest technologies and energy innovations as they become available during the life of the contract. With these*

contracts the Army should not only want but should negotiate so that the utility system that is being privatized will remain on the cutting edge of technology.

Title: *Evaluation Assistance Tool – I00039*

Lesson: One or two installations have asked the utility provider to provide the names and POC for customers (5-10) who have had utility service problems. Installation personnel then talk with these customers about how the problem was resolved and how they feel about the utility provider. These installations believe that they are better able to evaluate utility provider performance this way.

Title: *Bundling of Utility Systems – I00040*

Lesson: Some MACOMS and other organizations are pushing bundling as the best way to go for utilities privatization. One installation hired two separate firms to review the bids for WW and PW (1 firm for each). Neither firm had the responsibility for bundled proposals. The installation had to modify the contracts with these firms to have one firm review the costs for the system they were assigned to review and the costs for the bundled proposals and feed the appropriate information to the other firm. *Bundling is not always a good way to go in solicitation. First, not all systems lend themselves to bundling – Potable Water and Wastewater fit well – Electrical and Natural Gas do not fit as well – all 4 together is not a good fit at all. Second, the evaluation of proposals is made harder. The Federal Acquisition Regulation is against bundling as being anti-small business. The Army may have consolidated RFPs for administrative purposes. Army policy, however, is that there will not be bundled RFPs.*

Title: *Standard DoD RFP – I00041*

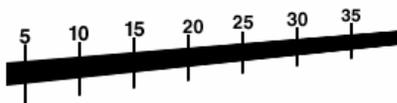
Lesson: Need a standard DOD RFP. Each Service has its own view of what is a good RFP. There have been many variations of RFPs issued so far in the UP process. This is confusing to the utility providers. *To eliminate this confusion and help speed up the process, installations should not use their own version of an RFP but start with the DESC RFP template and tweak as necessary for the local site. Contract clauses will not be added without a firm defensible reason.*

Title: *Solicitation Period Length – I00042*

Lesson: The traditional construction RFP response times of 45-60 days are not adequate for utility privatization actions. Industry has asked for more time. Today the minimum time for a utility privatization action is 120 days but most solicitations that have already occurred have had to be extended to 150 to 180 days.¹ *Make the solicitation period be a standard 120 to 180 days to allow the proposed bidders adequate time to formulate their response to the RFP. Without the proper amount of time a utility provider may not develop their best proposal and, in some cases, may just not respond at all.*

Title: *UP Contract Length – I00043*

Lesson: The law now allows UP contracts for a maximum of 50 years. However, 50 years may not be the best time period for a specific UP contract. *The*



length of each UP contract should be evaluated by each installation for each utility system and the length of time that is best for the situation should be put into effect.

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Title: *Know What You Want to do up Front – I00044*

Lesson: There is a great deal of information that the installation will need to know before the UP process can be completed. It is usually best to get this information pulled together as early in the process as possible. Know whether the installation will pursue a sole source or a competitive contract. Know if the installation is in a franchised area or not. Know whether a regulated or non-regulated company will be pursued. Know what the installation will do regarding easements and transfer of real property. Know whether the installation will transfer repair parts to the new owner or will it sell or turn them in. Determine what will happen (right of first refusal or placement within the Government) to the personnel filling the positions that work on the utility system that is being privatized. Know detailed information about the inventory. Know who the reimbursable customers are for the installation and how they will be billed in the future. Know whether the installation wants to include lights that are controlled from inside a facility and whether street and parking lot lights are to be included in the RFP outright or as an option. Know what the installation's environmental concerns are and how they are to be handled. *Knowing this information up front will make it easier to develop the RFP, EA, IGE, etc. and will make it easier to negotiate with the utility provider. The existence of franchise laws does not necessarily mean the installation can go sole source without a competitive solicitation. Check with SJA and OGC personnel before pursuing this route.*

Title: *Rate Calculations – I00045*

Lesson: If possible, contract with an A-E firm within the state that performs rate calculations for municipalities. The installation will then know what type of rate to expect. *Have the firm develop rates for both the status quo position and for different options. The installation will then be comparing apples to apples. One installation that did this found out that the utility provider proposed rate was approximately 30 to 1 compared to the calculated government rate.*

Title: *Transition Plan – I00046*

Lesson: It would behoove the installation to know up front how the winning bidder proposes to proceed with the transition from Government to utility provider operations. The installation also should develop its own transition plan. *Need to have a requirement for a transition plan from the utility provider as part of RFP. When the contractor provides it, the Government will have something to formally check progress against.*

Title: *GSA Area Contract– I00047*

Lesson: There are existing GSA area contracts that the installation may use if it is to their advantage to do so. *Need to use GSA area contracts where the installation would pay the utility provider to connect and then the utility provider will realign the installation's rate structure based on meters at the service point.*

Title: *Commodity and O&M Together– I00048*

Lesson: In a number of the RFPs there has been little or no interest expressed in taking over the utility system from the Government. The Army needs to ask what the utility provider can be offered that will make it attractive enough for them to submit a proposal. *Put the commodity in with the operations and maintenance of the utility systems and there will be plenty of proposals. OSD and Army policy is to uncouple the commodity and the system.*

Title: *Meeting Regulated Utility Provider Requirements– I00049*

Lesson: When the Government gets a regulated utility provider to take over the utility system, the Government is assured that it is getting a provider who will be watched over carefully by the Public Utility Commission (PUC). This will ensure rate increases are being scrutinized along with accounting practices and methods of operation. *Need to ensure that whoever bids on the RFP has to be able to meet the same requirements as a regulated utility provider. Also need to check with the PUC that the privatization contract is subject to PUC oversight and not awarded to a non-PUC entity.*

Title: *Fine Print and Attention to Detail – I00050*

Lesson: Be wary of what the proposed bidder offers. Make sure you pay attention to the details for the things initially missed can come back to haunt you. This applies to the RFP, SOW, and the proposals received. For example, one installation did not notice the statement that “we are exempt from wheeled power since state law prohibits us from purchasing power from any other source. *Read the fine print as well as the rest of the documents very carefully. Ask questions about the things you do not fully understand or that might be interpreted different ways. Things may not always be the way they seem.*

Title: *Special Clauses – I00051*

Lesson: There have been a number of special clauses added in various UP RFPs over the last few years. In most cases this is not needed. *The only special clauses that should be included in a UP RFP are: (1) the Government owns the right to distributed generation and (2) in the case of a national emergency, the Government has the right to take over and operate the system. Use the DESC standard template as a check to be sure.*

Title: *DCAA Audit – I00052*

Lesson: For these long term contracts (up to 50 years) to operate and maintain a utility system that the installation needs to perform its mission, the installation wants to be sure that the proposed bidders can meet all obligations. The installation does not want another ENRON. *There should be a DCAA audit conducted before any UP contract is awarded. Contractor defaults and bankruptcy can occur regardless of all precautions taken. The contract’s General Provisions should have required sections to protect the government’s interests.*

Title: *DESC RFP Template – I00053*

Lesson: The DESC RFP template's J section needs more guidance on what should be included. Other parts of the template will also require adjustments to make the document fully useful for any installation. One installation revised Section L based on what was included in the AF RFP and the HESC RFP documents. Other installations have taken many liberties with this standard RFP before it was a useful document. *An installation cannot just take the DESC RFP template as is and go straight to solicitation. The template will have to be carefully reviewed and tailored for each installation. However, tailoring the RFP will take far less time than developing the RFP from scratch.*

Title: Contract Administration – I00054

Lesson: Contract administration will be performed at the installation, but a UP contract is new to them. Installation personnel will require the proper training to perform at an optimal level. They need to know who will perform QA and how it will be performed; what will the contractor have to provide the installation and vice versa; and how will the installation handle the real property transfer. In other words tell the installation how to implement the contract upon award. *DESC has been tasked to develop a UP contract administration training program for installation personnel. There is no date set for completion of this task.* ²³

Title: Working with Utility Providers – I00055

Lesson: There are many details that a utility provider will need to know about the utility system being considered for privatization. There are many things the Government needs to know about how a utility provider's work processes are different from the Government's processes. *As soon as the UP study is announced and the solicitation for interest has been issued, start working with the utility companies to hammer out what needs to be done to reach a decision – what the Government needs to reach a correct decision and what the utility provider needs to be able to submit an accurate proposal.*

Title: Decision Documentation – I00056

Lesson: Once the final decision is reached, the installation must prepare and submit the final decision documentation. Other installations have already prepared final decision documentation packages. *Therefore, prior to the actual decision, installation personnel should contact the MACOM to obtain a copy or firm guidance on what is good decision documentation so that the installation can copy it. There is no need to reinvent the wheel, keep the process moving.*

Title: Rate Increases – I00057

Lesson: Rates for utility systems privatized at many installations have gone up substantially since the systems were privatized. At one installation electricity has gone up 25% with fuel charges being listed as the primary reason. *Acquisition process personnel need to pin down the escalation clauses so that installation budgets do not continue to be eaten up by the increases. Acquisition personnel need to find and insert contract clauses that will protect the installation. HQDA knows and anticipates utility costs will be higher after privatization due to the*



paying for recapitalization and improved operations and maintenance. Higher utility costs due to fuel charges are independent of privatization and would occur regardless.

Title: *Guidance and Assistance – I00058*

Lesson: The UP process is new and very complex. Installation personnel know very little about the process. *The Army could help the installation by: (1) ensuring the standard RFP and/or published guidance points out things to look for in the submissions from the utility providers and things that could be put in the RFP to cover the installation/Government and (2) providing someone with experience in utilities privatization efforts to assist the installation during negotiations with the utility provider. The installation should also make full use of the expertise available at DESC, HESC, Corps of Engineers Districts, and ACSIM.*

Title: *Sole Source – I00059*

Lesson: Personnel from one particular installation were talking with the local electrical utility provider back in the 95-96 timeframe and could have concluded a deal with them. The local utility provider would have bought the utility system for \$1 and given the installation credit for \$10M over the next 10 years. This deal was not allowed to take place. There are other examples where sole source is the very best way to go for utility privatization. This may be the only way if there has been no interest expressed. *The field needs the capability to go directly to and deal with the local utility provider rather than going through the whole competition route. Sole source contracts with the local utility provider would be in the best interests of the Army. DOC and JAG personnel need to be completely up-to-date with the Sole Source rules and regulations. 10 USC 2688 requires compliance with FAR and the use of the competitive process.*

Title: *Utility Provider/Industry Assistance – I00060*

Lesson: Seeking industry comments on draft RFPs has improved the Army's acquisition strategy. Issuing Notices of Intent (NOIs) or a synopsis prior to the RFP helps generate interest in the Army program among utility providers.¹ *Industry must be a partner from the start to help develop privatization documents. Request for Proposals should be done in two steps, with input from the utility industry to flesh out a solicitation that is clear, comprehensive, and is biddable. Intent is to end up with a contract that meets the government's needs, provides the utility provider a reasonable return on its investment, and is the best value for the government.*

Title: *UP Is a Bill of Sale, Not Contract Action – I00061*

Lesson: Some installations do not consider the UP process as a contract action. *Utilities privatization is both a bill of sale action and a contract action; therefore Real Estate should be involved from the beginning to work with the primary office working the action, the Energy Support Office or DPW (should support).*

Title: *Alternative Proposals – H00003*

Lesson: HESC allowed for alternative proposals in the RFPs that it issued. There were many bidders who actually provided alternative proposals. These proposals proved to be very difficult for the Source Selection Evaluation Board (SSEB) to evaluate. It was especially hard for the SSEB to ensure that there was a level playing field throughout the process. *Alternative proposals may bring some innovative bids to the table. You will need to check with your acquisition personnel on how to handle alternative proposals. If there is a very promising alternative, acquisition may agree that the other prospective utility providers should be asked to rework their bids based on meeting the innovation(s) proposed. Regardless of whether alternative proposals are or are not allowed, the RFP will need very complete system information (past history, maps, inventory, condition, etc.) before it can be issued.*

Title: *Five-Year Basis for Decision – H00004*

Lesson: HESC knew that it was very difficult for a proposed bidder to come up with accurate cost data covering a period of 50 years. Therefore, in its RFPs, HESC asked for five years of cost data from proposed bidders and then extrapolated this data for 50 years in order to perform the EA. *Use of the UPEAST Model requires the proposed bidder to provide 50 years of cost data. Therefore, HESC will revise their RFPs to require 50 years of cost data from the proposed bidder.*

Title: *Cost Accounting Standards (CAS) – H00005*

Lesson: HESC did not address CAS in their solicitation packages. *Future solicitation packages will include standardized wording that addresses the applicability of CAS.*

C. Legislation

Title: *Expanded Utilities Privatization Authority – I00062*

Lesson: Need to expand utility privatization authority. *The authority to privatize utilities needs to be expanded to include interest in real property as well as easements and right-of-ways. This is already included in 10 USC 2688.*

Title: *Secretary of the Army Authorization to Convey Small Parcels – I00063*

Lesson: Federal Acquisition Regulations (FAR) preclude bid solicitation when the contracting officer (KO) does not have the authority to make an award. An installation KO cannot legally request potential utility providers to bid on purchasing an Army utility and becoming the utility service provider, since award cannot be made until after the land transfer is authorized in law. Therefore, there is a need to convey title to the land associated with a water or wastewater treatment plant immediately when these systems are privatized. Financing major improvements and upgrades are less costly when the utility contractor owns both the land and the utility.¹ *Authorize the Secretary of the Army to convey small (less than 50 acres) parcels with a utility plant after a 21-day notification period and submittal of an economic analysis will streamline the process and eliminate the problem mentioned above. Authorization was provided at the Secretary's level to transfer land with a privatization contract in Title 10, Chapter 159, USC Section 2688.²*

Title: Contribution In Aid of Construction (CIAC) – I00064

Lesson: Contribution In Aid of Construction (CIAC) can be a very significant factor in an EA conducted for UP. It could possibly be the one item that could make it uneconomical to privatize. *Need to get legislation authorizing the waiver of the CIAC tax so the installations can structure the best deals to convey their utility systems.*¹ ***The Economic Analysis will handle taxes as a wash to equalize all bids. If the winner incurs CIAC expenses, Army will pay the bill.***

Title: Extend Ten Year Term for Utility Contracts – I00065

Lesson: Need to extend the 10-year term for utility contracts long enough for the utility contractors to amortize their investments at a rate that the Army can afford.¹ *Legislation (FY 2000 Defense Authorization Act) was approved to allow for terms of up to 50 years when awarding a utility services contract when conveyance of distribution systems is included.*

*Also included in the legislation was the authorization to use MILCON funds that have been programmed for a utility project for privatization support.*²



Title: Change Competition Language in USC Title 10, Section 2688 – I00066

Lesson: Sometimes competition makes no sense whatsoever. There is a utility provider that has been servicing the installation for years and is quite willing to continue to do so. Why not just contract with the provider – quicker and in the long run the cost of competing may be more than the Government could ever hope to save over the life of the contract. *Need to amend/revise USC Title 10, Section 2688 to change the current “competition” language. The current language makes it pretty hard to privatize some systems. ACSIM has put in a request for this change through the Business Initiatives Council (BIC).*

Title: A-76 and UP SOW – I00067

Lesson: It would have been much easier to perform utilities privatization before conducting A-76 studies. There would not have been the need to adjust the UP SOW to eliminate maintenance and repair (M&R) when there is an established M&R contractor on board as a result of an A-76 study. *In the future perform the UP process before doing the A-76 process.*

Title: Cluttered SOW – I00068

Lesson: Sometimes there are parts of a utility system that is no longer required or desired by the installation. If this is so the installation does not want to have these parts as a part of the SOW. *If there are parts of a system that is not wanted or needed, get rid of them before starting the UP process. Do not clutter the SOW.*

Title: Underground Utilities – I00069

Lesson: A good detailed inventory is almost impossible to deliver when portions of the utility system are underground. The utility provider cannot accurately determine the inventory either and as a result will have a higher risk factor and will come in with a higher cost. *The Army needs to determine the best way to identify what is included in the underground utility systems and what condition the system is*

in and use this methodology for all underground utility systems in the Army. There is a process change to acknowledge the installation's inability to fully inventory and condition assess the system and provision to share the contractor's risk by true-up of recapitalization costs over the first five, ten, or fifteen years of the contract.

D. Policy and Guidance

Title: ASCIM No Exceptions Statement – I00070

Lesson: Installations have a problem with the “No exceptions” statement. One installation submitted a request for exemption in July 2000 and still has not received an official reply. *There are some systems where it just may not be smart to privatize. The utilities privatization process may cost \$500K or more and take from one and one-half to two and one-half years to complete and some cases even longer. There would never be enough savings to pay back the expenses of privatizing. Utility privatization was not intended as and is not a savings program. It is a mechanism to recapitalize the Army's utility systems.*

Title: Future MCA Utility Projects – I00071

Lesson: Conflicting guidance has been provided on how to handle the utilities portion of future MCA projects. *The installations need consistent guidance on how the utilities portion of future MCA projects will be handled when the project impacts a privatized system(s). The Army's position is that the MCA project should include the funds to develop the new utility system required and to connect this to the privatized system that the utility provider will then operate and maintain.*

Title: Transition from Government to Utility Provider Operations – I00072

Lesson: There are installations that will soon be involved in a transition from Government to utility provider operation. However, there is no real transition guidance that has been provided to help the installations with the process. *Installations need guidance that tells them who should be involved in the transition, what role they will be playing and how they roles interrelate, and why. Installations need this guidance for each function that will be involved in the transition. They need to know if the utility provider should be located on or off post and what the installations are required to provide to the utility provider.*

Title: Policy, Guidance, and Program Management – I00073

Lesson: The field needed guidance and a template for the utilities privatization process from the very beginning but it was not available. Both guidance and a template are now available but it should have been developed at the beginning of the process. The field feels that no one has been driving the train for the last 5-6 years. *The field really needs to see program management exercised at the ACSIM level and very clear-cut guidance issued from HQDA. The Army needs to decide exactly what they want to do and then tell the folks in the field to do it. The Army needs to provide clear, concise, and definitive guidance in the form of a formal guidance document covering the entire process. The Army will need to update this document as final decisions are made.*²² *In addition, HQDA, ACSIM, and*

MACOM should provide guidance spelling out exactly what is desired to be accomplished at each step, what is the direction they want to go in, and how the UP process should proceed to reach the ultimate goal. (Installation) This guidance should include a guide on contract management for each site to use and guidance on what to include and how to complete an EA. OSD and the Army are continually developing, updating and refining policy, guidance, and program management documentation and procedures to ensure the utility privatization program operates as effectively and efficiently as possible. This documentation will continue to evolve as long as the utility privatization program continues.

E. Electrical

Title: Government Protection from Unwarranted Price Increases – I00074

Lesson: It's almost a given that most qualified bidders have high standards for safely operating and maintaining electrical distribution systems. Contract language must be inserted that will insure these standards are met, but this is relatively straightforward compared to satisfying the need to protect the government against price increases, while still allowing the supplier to pass along legitimate, necessary increases to cover the cost of purchased electricity. *The Army needs to determine the proper language to insert in the contract to ensure the utility provider only passes along legitimate price increases. Franchise utility provider is subject to PUC review and approval of price increases. Also government contractors are auditable by Defense Contracting Audit Agency (DCAA).*



F. Potable Water (PW)

Title: Delivery Points – I00075

Lesson: The installation should have in the RFP that all delivery points will have meters. The reason for this is that many of the PW systems are old and have extensive leaks. *If the Government meters each delivery point then the utility provider who would own the distribution lines up to the meter would be the entity absorbing the water loss. The Government would only pay for water that was actually delivered. Each installation should optimize between more metering and the costs of paying for water loss.*



G. Waste Water (WW)

Title: Cost Study for Price Increases – I00076

Lesson: Currently the installation pays for WW cost increases imposed by the utility provider. *The Army needs a clause or some requirement in the RFP that lies out that there has to be cost study conducted by an independent agency to verify proposed cost increases. This study*



should determine how rates are calculated and if they are appropriate. This should be a clause that may be exercised at the option of either party. Government contractors are always subject to DCAA audit.

H. Natural Gas

Title: Natural Gas Low Market Interest Strategy – I00077

Lesson: Since the Army is experiencing low market interest for gas systems. So far each installation is dealing with this as it arises. *ACSIM need to develop a “no interest” strategy. This can be initiated by contacting the American Gas Association (AGA) to establish dialogue and an action plan to enhance industry participation. Possible items to look into, after initial contact with AGA, are: (1) the offering of financial incentives (used in Residential Communities Initiative) – will improve the attractiveness of Army systems, (2) consider entertaining bids from local providers for both the gas commodity and the distribution service, and (3) transfer risk to the contractor over a period of time – 0% risk at start and phase in a percentage of risk as the system is replaced or updated to current industry standards.*



Title: Work with State Level Environmental Personnel – I00078

Lesson: State environmental folks can be very exacting and demanding. This can create a long drawn out process to have all environmental requirements that have to be complied identified in the SOW. *Therefore, installation personnel need to start working with the state folks as early as possible. Learn what the state’s expectations and guidelines are so that the installation can ensure these are included in the SOW. Also see Categorical Exclusion.*

I. Financial

Title: Natural Gas Low Market Interest Strategy – I00079

Lesson: Currently there is little interest being expressed in the Army’s existing natural gas systems. Interest, when it is expressed, is based on replacing the existing system with an entirely new system. *The installation’s DOC and DRM have to work closely together since this will be a continuing services contract. If they can reach an agreement on how upgrades (replacement) to the system can be rolled into the J account and amortized over 5 to 10 years rather than paying all these costs up front, it could be advantageous to the installation’s and the Army’s budgets. Also see I00077.*

J. Utility Provider Comments

Title: Response Timeframes – UP00002

Lesson: The initial time frames for response were too short. After the extensions granted on the basis of questions raised, the time line ended up being just about right. With regular face-to-face communication sessions like those mentioned above, the initial time frame might have been acceptable. There would have been a

better understanding by both parties as to what was desired. Also the provision of a sample RFP to the utility providers prior to the issuance of the real RFP would have helped the utility provider better prepare to respond and could have shortened the time frame. The utility provider's bid structure in many cases is set up different from the way the RFP wants the bid. For example, in electricity some utility providers base their bids on the number of streetlights, number of transformers, etc. They do not have anything that is based on kilowatt hour (KWH). With their system, they have to prepare bid based on the way they do things and then translate this information to what the Government wants. This takes time. *The time period for responding to proposals should be a minimum of 120 days and a maximum of 180 days. Determine if there is any way the RFP (bid schedule, in particular) can be set up so that it closely matches the way utility providers currently bid on contracts. If not, the Government should provide a sample RFP, including the Bid Schedule, so that the utility provider can begin to restructure the way he bids prior to receipt of the actual RFP.*

Title: DCAA Audit – UP00003

Lesson: Utility providers have not been on the receiving end of a DCAA audit before. As a result they do not know what to expect or how data should be structured. *Advising the utility provider as to how the DCAA year-end audit would be conducted, what the auditors would be looking for, and how the data should be structured would be very helpful. The utility provider could then have the data ready for review and in a suitable format that would eliminate many questions. This would reduce the amount of time required for the audit. There also should be better coordination with DCAA prior to the audit.*

Title: Closely Review the Utility System and Documentation – UP00004

Lesson: The utility provider needs to look very closely at the utility system and documentation before taking it over. Learn everything you can about the system so that you will not be caught by surprise. The Army has done a pretty poor job of maintenance over the last few years. In some cases, it actually looked as if the Army had not performed anything but breakdown maintenance since they started the UP process. In many cases, the Army has had very little information on the inventory. The utility provider may have to go to 2-3 places before he/she can find the information they are seeking. As a result, one utility provider, not being as careful as they should have been, have a water storage tank that has lead paint both inside and outside of the tank. The utility provider needs to get rid of the lead. The Army is saying the ground and water contamination is the utility provider's problem. Litigation is ongoing. The Government's inventory and utility maps are very seldom up-to-date and it takes a long time after contract award to integrate the Government's utility system with that of the utility provider and to publish new and accurate utility maps. *The Government needs to re-visit the issue of keeping their inventory data (maps, surveys, studies, condition, age, location, demarcation points, etc) current. The Government also must now balance the terrorism threat against limited access to information.*

Title: Government Bureaucracy – UP00005

Lesson: The amount of bureaucracy is overwhelming and causes the UP process to take way too long. In some cases it has taken as long as 5 years to complete the privatization of PW and 7 years for WW from start to finish. This is way too long. Personnel involved in the UP process are retiring, dying, getting promotions, or accepting jobs in other locations during the process. Each time a player moves on, the replacement has a learning curve before he/she comes up to speed. In some cases, the new player is in a position to affect a whole new approach to the process. *The process can and should be completed more quickly.*

Title: *Contract Documents Confusing – UP00006*

Lesson: The contract documents that the Government uses are quite confusing (volume makes it even more so) to utility providers and the acronyms are also not familiar. Therefore, some utility providers have had to hire people that were familiar with the Government contracting process to help them through the process. This unfamiliarity, along with the fact that the way the Government wants the response is not the way the utility provider normally presents it to his/her other customers, has made it very difficult for the utility provider to prepare a bid for the system(s). The contract documents are not standard from one Army organization to another (DOC, COE, and DESC all have differences). Many of the contract documents look like the cut and paste method has been used to prepare them. *The Government should do a better job of explaining the terminology and the UP process before the utility providers initiate proposal preparation. Government would make it easier for the utility provider if they used one standard RFP.*

Title: *Sole Source Contracts – UP00007*

Lesson: Some utility providers believe the Government should use sole source contracts. *The Government should utilize sole source contracts whenever possible. 10 USC 2688 and the FAR both have competition requirements that the Army must uphold.*

Title: *Feedback – UP00008*

Lesson: The Government is very slow in providing feedback on proposals if they provide any feedback at all. As a result, the utility provider has no idea as to how well he/she met the Government's requirements for proposal submission and if the Government found the proposal to be adequate. In the meantime, the utility provider has used the same basic format and premises in responding to other RFPs. This could have a significant adverse impact on the utility provider – with quick feedback, he/she could make mid-course corrections. *The Government should provide quick feedback on whether or not a proposal submission met the basic requirements of what the Government was expecting.*

Title: *Standard Operating Procedures (SOPs) – UP00009*

Lesson: At least one utility provider stated that SOPs were not referred to in the RFP. It seems unlikely that the Government does not have SOPs. *If there are SOPs they should be referred to in the RFP. This would also help to better define the level of service the Government desires.*

Title: *Final Negotiations – UP00010*

Lesson: The Army needs to speed up the utility privatization process. *One way to speed up the process in the negotiation phase is for the Government to provide the contractor their final cost figure and ask the utility provider if he/she could meet it. This would make the negotiations go much faster. Price negotiation is not suitable for complex negotiations like utility privatization.*

Title: *Length of Contract – UP00011*

Lesson: 10-year contracts were not very good for the utility industry or for the Government. The 10 years was not the normal period used by the industry to recover their investment nor were their backers used to this period of payback. It did not allow the utility provider to recoup capital investment and make it economical for them. *The 50-year period now allowed is much better for the industry and the Government. With a 50-year period the utility industry can plan its investments better and will be much more willing to look for innovations to keep the system they now own in top operating condition. The benefit the Government receives from this longer period is a more efficient and reliable system.*



Title: *Contract Requirements and Clauses – UP00012*

Lesson: Contract clauses in the RFP refer to other clauses that the utility provider has to look up to find out what it says and then this will have other references. *The utility provider does not have time to look up each and every reference and still meet the due date. Is there any way to shorten this process?*

Title: *Question and Answer Sessions – UP00013*

Q&A

Lesson: The Government should be able to provide immediate answers to verbal questions asked during the pre-proposal conference rather than having the utility providers submit questions in writing and then get written responses back at a later date. This delays the overall process. *The Government needs to come up with another system or provide immediate answers and then publish them. Corrections can be made when publishing the questions and answers.*

Title: *Standard Utility Provider Items – UP00014*

Lesson: The proposed bidders spend a lot of time duplicating items if they submit proposals for more than one RFP. There should be a better way for the Government to handle this. *The Government should establish a web site for the standard items that the utility provider has to provide for each RFP that he/she bids on. Items such as Business Code Number, Offeror Representations and Certifications, Quality Control Plans, Contingency Plan, etc. could be put on this web site for the Government to refer to versus having the utility provider submit the same information over and over.*

Title: *Code Violations and Liability – UP00015*

Lesson: The utility system taken over by the provider normally has numerous code violations yet the utility provider has to assume liability for the system. *The*

Government should consider phasing in the liability for the provider as the utility system is brought into compliance with industry standards and regulations. This makes sense from their point of view as they are replacing and upgrading the utility system to the standards they are held accountable to meet. The Government could and should make the sharing of risk a part of the proposal.

Title: *Command Changes – UP00016*

Lesson: The Army’s policy of changing the boss every two years makes it challenging for the utility providers. They have just developed a good working relationship with the old Commanding General (CG) or DPW when in comes a new CG or DPW. Have to start developing a relationship all over again. The utility provider likes to work with the top guy since they know they can get a quick opinion on whether the command’s response will be positive or negative. Also if the top guy supports it, it usually is a “go”, just takes time to work through the system. *This working through the system is a slow process and it seems that the Government should look at this process to see if there are ways to improve it.*

Title: *Easements – UP00017*

Lesson: Utility providers need blanket easements rather than having an easement for each section of distribution line that is more than 15 feet in length. A blanket easement is more realistic especially when there are many cases when the Army does not know exactly where their utility line is located. To develop specific easements in these cases could conceivably take a long time. *The Government should consider use of blanket easements. It is contrary to customer and practice to fully document real estate transactions.*

Title: *Think like a Utility Provider – UP00018*

Lesson: Ask the following questions:

How do I benefit from privatizing the Government’s utility system?

What is the risk I will not make my return or even lose money?

Contract Risk

Knowledge of system risk?

Unique standards/rules for Government?

In the early years of utilities privatization, government solicitations put the risk of guessing wrong on the system condition on the utility provider resulting in high risk for the provider and a high bid. There was poor information about the system conditions and no true-ups were allowed once true condition information was found. The Government wanted bidders to meet its service restoration, etc. conditions and there were financial penalties if they were not. *The solicitations now allow the utility provider to bid consistent with how it makes money as a regulated utility and bids may be amended once actual utility system conditions are determined. Now utilities can provide service consistent with its regulated service standards without separate financial penalties.*

How hard is it to bid?

Does my corporate charter allow me to bid?

In the early days, some systems and bases were bundled (bid all or none) preventing a utility from bidding. *Now the RFPs no longer bundle bases or systems – utility provider can bid on one system, all systems, or none.*

What does it cost to submit a bid?

This has remained unchanged – on the average, it costs more than \$100, 000 per RFP to bid.

Standardization?

In the early days, the Army had little standardization among RFPs and their RFPs were different from the RFPs produced by the Navy and Air Force. *Now the Army and Navy are standardizing their RFPs. Assume that the Air Force will follow.*

Will there be any amendments?

This has remained unchanged – there are many amendments, some of which drop or dramatically change the RFP.

How hard is it to get people to work on a bid?

This has remained unchanged – the utilities are preoccupied with deregulation, reorganization, etc.

Does bidding require any regulatory action?

This has remained unchanged – regulatory approval may be needed in some cases.

What are the odds that I will win the bid?

How are federal taxes treated?

In the early days, federal taxes, for the most part, were included in the analysis of utility bids. *OSD has endorsed model that nullifies the effect of federal taxes.*

Do I have to bid high to deal with contract risk?

In the early days, fixed price bid requirement and poor system information encouraged high bids because of the risk factor for the bidders. *Bids are now more realistic because of the ability to true up costs and removal of the fixed bid requirement.*

How soon can I start making money?

Initially the Government schedule assumed three to four years from the RFP to system takeover. Many RFPs have been alive longer than this. *Currently the Government schedule assumes 2-3 years from RFP to system takeover with the Government looking for ways to speed up process. One way being strongly considered is using sole sourcing where no previous privatization interest is expressed.*

Title: Bid Evaluation – UP00019

Lesson: Some utility providers have submitted numerous proposals and have received no response from the Government s to the approach, methodologies, etc. As a result the companies continue along the same path in proposal preparation. *The Government needs to hold training sessions on how to bid and how bids will be evaluated. After proposals have been submitted the Government makes major changes to numerous proposals. The Government should hold discussions with the prospective proposers before the solicitation is issued so that discussions can be held on what to expect as far as scope, what the utility providers need to be able to provide a realistic bid, etc. This is a Contracting Officer's action. The Secretary of the Army, Acquisition, Logistics and Technology (SAALT) should follow-up on this idea.*

Title: *Short Form Privatization RFP – UP00020*

Lesson: The Government uses similar RFPs for both large and small utility systems. To respond to these RFPs require the utility providers to spend approximately the same amount of money on each proposal with the chances of getting a good rate of return being much less on the smaller system. *The Government should develop a short-form or simplified RFP for smaller systems.*

Title: *RFP Release – UP00021*

Lesson: The various Services do not check to determine what UP RFPs are already on the street before they issue their RFP. This can create a hardship for a utility provider who is interested in many of the systems and locations. The provider may have to pass up bidding on some of the RFPs because there is not enough time or enough proposal writers to respond to all. RFPs are often extended, postponed, etc. with little or no warning. The initial proposal preparation timeframes set by Contracting Officers are almost always unrealistic (extensions are the norm). *The Government should coordinate RFP releases among the Services. Further the Government should adopt a standard and realistic timeframe (4 to 6 months) for responses. Each Service follows its own schedule and will continue to do so.*

Title: *Past Performance – UP00022*

Lesson: The Government asks for past performance from the utility providers. Asking a company to prove that it can do what it has been doing for the last 50-100 or more years is an unfair burden. The references the utility provider can supply are of little value in showing that the company can perform on this contract. *This can be corrected by breaking the past performance into two categories. The first would be for non-utilities and they should provide past performance. The second category should be for utilities and they should be given a waiver or default for past performance and asked to address weaknesses (what they will do to correct them) identified on a checklist.*

Title: *Purchase Price/Valuation Concepts – UP00023*

Lesson: There are two options: “purchase” at fair market value (FMV) or “purchase” for nominal amount or \$0. If Government is charged for 100% of the purchase price (usually the case), both options have a net effect of zero on the Government. For Option 1, the IRS default methodology is “replacement cost new, less depreciation”. This can produce significant adverse financial impacts on the purchaser due to interest coverage and equity level. For Option 2, there are adverse financial effects for the purchaser and the value may be unacceptable to Government “accountants” as representing true fair value. *To make this acceptable to both parties, Congress should exempt transfer of military base systems from CIAC Tax; and the IRS should treat privatization transfers as “unusual circumstances” under Section 118(b) of the code. OSD continues to pursue this effort.*

Title: *Property Tax Issues – UP00024*

Lesson: Applicability of property tax varies from state to state. Regardless the Government currently does not incur such costs. This may create bias against

privatization. There will be considerable effort and cost required to resolve this issue. *It is understood that there were reservations by states in ceding property to U.S. However, there needs to be an uniform determination by the Federal Government that the utility property on a military installation transferred to a private entity, and used to provide service to the Federal Government, is not subject to property tax. UPEAST puts the Government and the contractor on a level playing field in this area.*

Title: Service Contract Act – UP00025

Lesson: There are differing/inconsistent opinions regarding the applicability of the Service Contract Act among the various branches/agencies of the Government. There are also differing opinions regarding the applicability to regulated vs. unregulated entities. *To help alleviate these differing opinions the “Regulated” definition also needs to extend to “Unregulated” utilities. IRS code, Section 7701 defines a “regulated public utility” as “a corporation engaged in the furnishing of ... (utility services)... if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States...”*

Title: Consistent RFPs – UP00026

Lesson: There are significant differences between the RFPs released by various branches/agencies of the federal government. Some of the agencies issuing these RFPs are: DESC (template), NAVFAC, Army Corps of Engineers, Air Force, and local Army installation contracting offices. This creates unnecessary barriers and complexity for the bidders and an inefficient use of bidders’ resources (i.e., retooling and repackaging same information). A DOD standard model would streamline the process and reduce cost for bidders and the Government. *To overcome these inconsistencies, use standard DESC model with Navy approach (i.e., bid on inventory package) on system inventory.*

Title: Utility System Inventory – UP00027

Lesson: The quality of Government provided inventory information varies greatly. The Navy’s approach is to provide a detailed, uniform data package for all offerors to bid on. This results in “comparable” offers. The Navy provides the offeror with an opportunity for a true up bid after “best value” selection. This results in a relatively low risk for offerors. The DESC approach places the burden on offerors to validate inventory. This results in high costs for due diligence work. The differences in inventory become a point of contention between Government and offeror. There is also a potential lack of consistency between bids because each offeror may come up with a different inventory. The risk is shifted to the offerors. *A simple way to correct this would be to use the Navy approach, incorporating a bid package. Not all Army installations have the same Directorate of Public Works (DPW) information detail. To stop and do an Army-wide 100% inventory up front would overwhelm Army resources.*

Title: Right-of-Way Easement – UP00028

Lesson: There is a definite lack of standardization/consistency in the easement business. The easements tend to contain rather onerous provisions, are often vague with wide Government discretion, and all the risk and uncertainty passes to offerors. RFPs often prohibit exceptions to easement or bill of sale. For example: "...and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee, thereof" and "...Competent U.S. Army Explosive Ordinance personnel will be dispatched to dispose of such OE property at no expense to the government." *The Government needs to develop a standard model easement with input from the industry and allow offerors to take exceptions to easement forms.*



Title: Negotiation Meetings – UP00029

Lesson: There needs to be a productive and efficient way for Government and offerors to discuss and clarify issues. Requests for revised proposals often require many of these “resolved/clarified” issues to be readdressed in written form. This defeats the purpose of the meetings and is a time and cost burden on offerors. *The Government should do one of the following to alleviate this problem: minimize offeror’s revision efforts by allowing meeting notes/documents to qualify as “official responses” or request written clarification first, then conduct negotiation meetings.*

Title: Contract Clauses – UP00030

Lesson: The Government does not really need a back-up supply for natural gas systems in critical buildings when utility providers offer a firm supply contract. Some of the systems the Government has installed to create this back-up supply and is now asking the utility provider to operate and maintain require a lot of maintenance (high cost). *The Government should eliminate its back-up supply for natural gas systems when the utility provider offers a firm supply contract.*

Title: Utility Industry’s Perspective on the Utilities Privatization Process

Lesson: There are too many DoD solicitations (1581 systems). Each system has its own RFP prepared. *All of the Services are going to more state or regional RFPs, but constructed such that the prospective bidders can bid on one, some, or all of the RFPs. There are also areas where the different Services are coordinating their efforts to go with a consolidated RFP. The Services still are not coordinating the release of their RFPs except in the case of consolidated RFPs.*

There is no standard DoD approach (3 different strategies, various types of RFPs, & various schedules). *The Services still have different strategies, RFPs, and schedules.*

The process is too complicated since the utility industry is not familiar with Federal procurement rules and the RFP process. *The utility industry is beginning to learn the process and federal procurement rules by being thrown into the fire. It would be easier for the industry if the Government provided training or booklets that explain the basics of the process and associated rules.*

The Army's RFP is too prescriptive and does not provide sufficient "Due Diligence" for the utility providers.⁹ *The Army has published guidance to all of its MACOMs and installations that privatization is the Army's goal and that the Army does not want to see unnecessary clauses (read restrictive) inserted in the RFPs and that the prospective bidder should be allowed an appropriate amount of time to perform "due diligence".*

Questions and Answers

I. Utilities Privatization Definitions

What is the U.S. Army's utilities privatization definition?

The transfer of ownership, operation, maintenance and improvements of Army utility plants and systems to municipal, private, local, or regional utility companies.

Installation becomes a utility customer, not a utility provider.^{1, 3}

What is the Air Force's utilities privatization definition?

Utilities privatization is a program whereby the private sector, including municipalities and other regulated, or non-regulated, utility companies, may own, operate, maintain, improve and assume responsibility for Air Force utility systems, where doing so is economically advantageous and national security is not adversely affected.²⁴

What utilities are included in the utilities privatization effort?

Water, wastewater, electric, and natural gas utility systems are being specifically addressed. Major commands and installations also have the option of privatizing systems for the generation or supply of steam, hot water, and chilled water; and systems for the transmission of telecommunications.

What is a utility system?

A *utility system* means any system for the generation and supply of electric power, for the treatment or supply of water, for the collection or treatment of wastewater, or for the supply of natural gas. For the purpose of this definition, supply shall include distribution. A utility system includes all plants, equipment, fixtures, structures, and other improvements used in connection with the system. This definition includes small utility systems with or without centralized "plants" (Wastewater systems include lagoons, evaporation ponds, septic systems, etc.).

II. Reasons for Privatization

Why are utilities being privatized?

Privatization of utilities has long been discussed in the department of defense. In 1998, the secretary of defense directed the military departments to develop plans to privatize utilities on military bases.²⁴

Why does the U.S. Army think that privatization is the answer to improving the utilities infrastructure?

Owning and operating utility systems are not core functions for the Army.

Utility systems are not adequately funded to keep pace with new regulations and technology. Infrastructure is deteriorated and maintenance is under funded by approximately 50%. Major improvements needed to meet environmental laws & regulations. In FY 99 the sustainment cost to prevent further deterioration was

\$184 million. The cost to bring these systems up to industry standards was \$5 billion.

Privatization is an investment strategy to re-capitalize infrastructure.

Workforce is shrinking.

Obtain safe & reliable utility services.

Privatization and partnering with local communities and private industry improves efficiencies and reduces over all costs.

Public utilities – municipal or privately owned – are focused in a competitive environment to provide a certain utility service in a cost effective manner.

When all anticipated costs are considered, privatization produces net cost savings/cost avoidance. However, the J account costs will increase.^{1, 9, and 12}

III. Utilities Privatization Strategy

What is the Army's utilities privatization strategy?

Current strategy is: centralized HQDA policy, budget and program oversight; procurement accomplished by DESC, USACE Districts, or the installation DOC; and decentralized execution of the utilities privatization program at MACOMs/Installations. Also the strategy is to group systems by installation (Fort Jackson solicitation), region (VA regional solicitation), or utility type (GA natural gas solicitation) as much as possible.

Privatization is the preferred outcome. To achieve this strategy, the Army plans to privatize all eligible utilities systems by 30 Sep 03 and to re-evaluate the exempted systems and those found to be uneconomical or had no response. The re-evaluation will be accomplished by using the standard RFP and UPEAST.

The Army will modernize utilities systems that cannot be privatized. The steps in accomplishing this modernization are: Identify systems that are uneconomical or will be retained for security reasons; determine funds required for modernization; and program for these funds in POM 04 -09.

With the Army's transition to Transformed Installation Management (TIM), future strategy is to improve on the good points of the current strategy by: centralizing policy, budget, program oversight & execution at HQDA/FOA; focusing resources on large systems with best potential for privatization; retaining installation's role & participation in privatization process; and centralizing procurement at DESC and selected USACE elements.¹⁹

What happens when an installation, via DOC, DESC, or Huntsville, issues a RFP and there is no response?

Determine If the RFP has been done correctly. If it has, then the installation, via DOC, DESC, or Huntsville, will go to the local utility provider, open discussions, and negotiate the best deal possible.

If it has not, then the RFP will have to be re-done and the solicitation process started over.²³

How is the Army going to continue to execute the utilities privatization program?

Maintain focus on the program; decide how to do UP under TIM; re-evaluate those systems exempted, non-economical or without a response train installations on the proper use of UPEAST; and execute the UP Action Plan.

Use the standard RFP template; centralize procurement (DESC, Huntsville); use automated tools – such as standard RFP on-line and Decision Point for source selection; use UPEAST; partner with DESC, AAA, FM, KPMG, COE, and industry (EEI, AGA, etc); maintain decentralized execution at installations; and keep Command/leadership focused on privatization.¹⁹

Will the Army permanently transfer the land under utility systems along with the infrastructure?

The Army Policy is to convey the underlying land with treatment plants in order to provide a clear division of responsibility and the potential liability between the Army and the utility. Public Law 105-85-Nov. 18, 1997 (10 U.S.C. §2688) has been amended to change Sec. 2812. PERMANENT AUTHORITY REGARDING CONVEYANCE OF UTILITY SYSTEMS, (b) DEFINITION OF UTILITY SYSTEM- Subsection (g)(2)(B) by striking “Easements” and inserting “Real property, easements.” This changes the text of Subsection (g) UTILITY SYSTEM DEFINED, (2) The term “utility system includes the following: (B) Real property, easements, and rights of way associated with a system referred to in that paragraph.”

What is the maximum number of years allowed for a reduction in charges in a utility service contract that is given in exchange for a utility?

When an installation conveys its utility system to a utility company, the utility company pays the fair market value (determined by the Secretary of the Army) for the utility. 10 U.S.C. §2688I. The payment can either be a lump sum payment, or it can be in the form of a reduction in charges for utility services provided by the utility owner to the installation. The National Defense Authorization Act for FY 00 added a new section to this provision that states that the period of this service contract “may be for a period not to exceed 50 years. Installations are encouraged to take advantage of this new authority to award utility service contracts for up to 50 years in exchange for conveyance of the utility system.

Will privatizing utility systems have an effect on the installation Storm Water Pollution Prevention Plan (SWP3)?

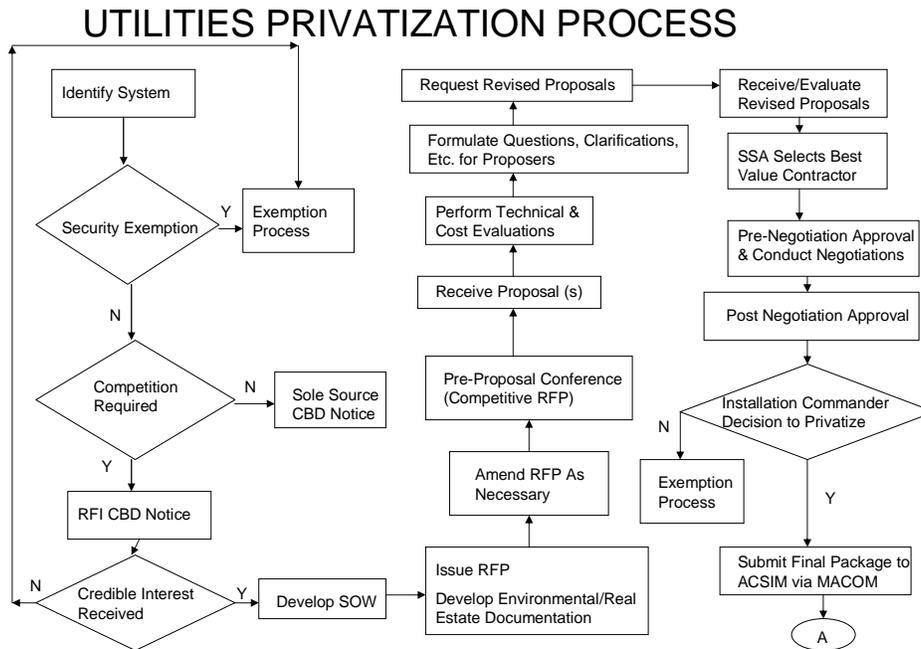
Privatizing a utility system may have an effect on the installation SWP3. The utility service contract and/or easement agreement should address issues that have the potential to cause violations of the installation’s SW permit and should cite specific Best Management Practice (BMP) requirements, to be implemented by the new owner (if required). Installations should review the installation SWP3 and appropriate changes should be made when systems are privatized.

IV. Utilities Privatization Process

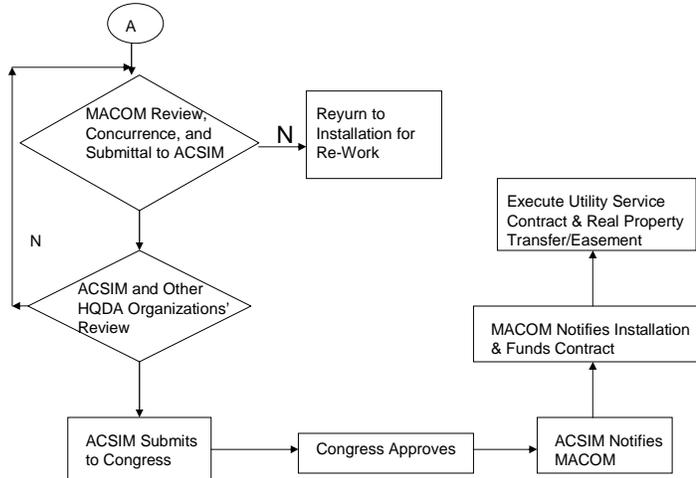
When is a system considered privatized?

OSD considers a system *privatized* when the contract is awarded. The Army will report this key date to OSD to show compliance with the DRID. However, there may be additional real estate related actions; i.e. easements and leases, which the Army will continue to track to ensure the infrastructure is conveyed.

What is the Army's utilities privatization process?



UTILITIES PRIVATIZATION PROCESS (CONTINUED)



V. Utilities Privatization – General

Must an installation include all utility systems in the economic analysis or study?

The DRID and the Army Plan require an inventory and inclusion of all systems. To assist the installation with making the “privatize” or “not privatize” decision, all systems should be included in the economic analysis or study. This inclusion could help ensure complete transfer of all functions and relieve the installation of continued oversight and responsibility.

If an installation has multiple “systems” and does not privatize them all, is an exemption required for the system(s) retained?

The Army privatization plan states, “The Army will privatize all utility (electric, natural gas, potable water and domestic wastewater) systems at active, federally owned installations serving the Active, Reserve and National Guard Components world-wide, except where privatization is uneconomical or where unique security reasons requires ownership by the Department.” Utility systems may be exempt from privatization only if privatization is uneconomical, there is no interest on the part of potential providers, or there is a unique security reason to retain the system under Army control. The total Army inventory consists of 1101 utility systems – 384 in CONUS and 717 in OCONUS. For simplicity, multiple utility systems of the same type (multiple wastewater or drinking water systems) on an installation are counted as one system. When making the decision **to privatize** or **not to privatize**, all systems on the installation must be considered. A decision not to privatize a particular system (or portion of a system) will require an exemption. It is important to privatize all systems or all portions of systems, when possible, to reduce or

eliminate the environmental liability associated with permits and associated compliance requirements.

VI. Key Players and Their Role

Who are the key players in the utilities privatization effort?

Congress (10 USC 2688; Def Auth Act FY00; PL 100-202, Sect 8093)

HQDA – ASA (I&E), ACSIM, OGC, ASA (FM&C), ASA (AL&T) – provides **centralized** policy, guidance, program management/oversight; programmed \$60M (FY99-04) to accomplish privatization; and programmed \$252M (POM 03-07) for increased utilities costs.

MACOMs – execute program and fund cost of privatization & annual utilities cost.

Installations (Execute, issue RFPs, administer contract)

USACE (Issue RFPs, grant easements, accomplish conveyances)

DESC – performs competitive procurement for electric & natural gas commodity and serves as the procurement agent for Army utilities privatization (Model RFP)

Air Force & Navy – Partners in Joint Service RFPs.⁹

VII. Congressional Notification

What's in a Congressional Notification Package for Contract Award?

Once a Commander has determined that a potential provider can successfully own, operate, and maintain the system(s), the installation must submit a request to notify Congress of the potential contract award. This is done to satisfy the requirement of DRID #49. The following documentation must be included in the package and forwarded through the MACOM to OACSIM:

Letter from the Installation to the MACOM requesting notification of contract award;

Endorsement by MACOM to OACSIM;

Written synopsis of the process conducted to solicit for award, including analysis, alternatives, feasibility, and results;

Complete economic analysis prepared in accordance with published guidelines and created in ECONPACK (now UPEAST);

A copy of the proposed contract;

Endorsement by ACSIM to the Deputy Assistant Secretary of the Army – Installations and Housing (DASA (I&H)); and

Congressional notification letters issued by DASA (I & H).

What are the separate steps for and how long is the process for Congressional notification of the intention to award a utility privatization contract?

Preparing the Installation letter, written synopsis of the process, Economic Analysis, and a copy of the proposed contract and mailing the package to the MACOM;

Preparing the MACOM endorsement;

Review and evaluation by OACSIM and Army staff offices (Assistant Secretary of the Army for Financial Management, Assistant Secretary of the Army for Acquisition, Logistics, and Technology), Office of General Counsel (OGC), Office of The Judge Advocate, and other appropriate offices. After concurrence by all offices, the package is forwarded to ACSIM;

Preparing the endorsement from ACSIM to the Deputy Assistant Secretary of the Army – Installations and Housing;

Preparing the Congressional notification letters and issuing the letters and package to Congress;

Congressional review of the notification; and

OACSIM notification to the MACOM to proceed. ²

VIII. Exemption from Privatization

Who has exemption authority?

The Secretary of the Army is the only official authorized to exempt an Army utility system from privatization. Criteria and procedures for exemptions are outlined in memorandum, DAIM-FDF (420-49), 8 December 1998, subject: Policies and Procedures for Privatization of Army Owned Utility Systems at Active Installations, Exemptions from Privatization.

What is in a Request for Exemption Package?

If a Commander determines that it is not economically feasible to privatize a system or security issues prevent privatization, the Installation Commander must submit a request for exemption. This request has to go to the Secretary of the Army since only he has been given the authority to approve exemptions from privatization. The following documentation must be included in the package and forwarded through the MACOM to HQDA, OACSIM:

Letter from the Installation to the MACOM requesting exemption from privatization;

Endorsement by MACOM to OACSIM;

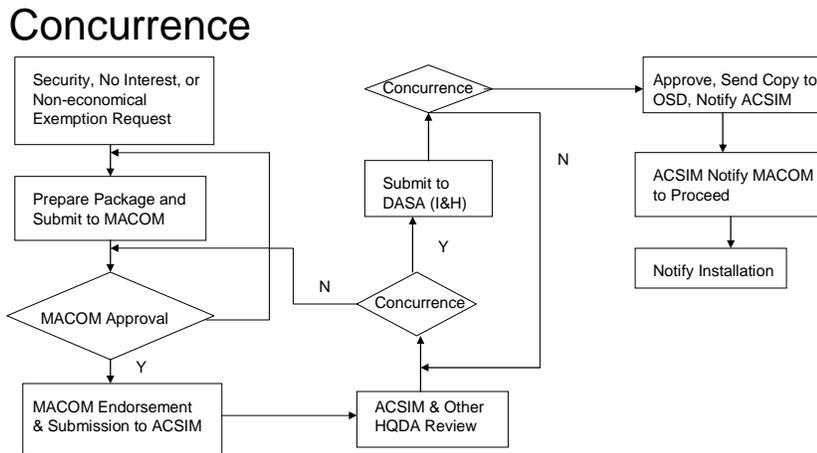
Written synopsis of the process conducted to solicit for award, including analysis, alternatives, feasibility, and results when uneconomical or justification due to security reasons;

Complete economic analysis prepared in accordance with published guidelines and created in ECONPACK (now UPEAST);

Separate letters from the Contracting Officer and the Legal Counsel concurring with the analysis, review, and decision to request exemption (when resulting from RFP evaluation).²

What are the separate steps for and how long is the process for granting an exemption from privatization?

UTILITIES PRIVATIZATION EXEMPTION PROCESS



What are the guidelines for exemption?

The Defense Reform Initiative Program exempts utility systems that are uneconomical to privatize or have unique security reasons why they should not privatize. “Unique security reasons” are those situations in which ownership of the system by a private utility or other entity would substantially impair the mission of the Department concerned; or would compromise classified operations or property.

Exemptions based upon economics are determined at three different steps in the process.

Uneconomical if there is no demonstrated market interest from the private sector to acquire the system.

Uneconomical if the estimated privatization cost is at least 25 percent higher than the government “should have been” costs.

Uneconomical if the economic analysis of the final negotiated proposal during the solicitation phase identifies a privatization cost that is at least 10 percent greater than the government “should have been” costs.³

What are the criteria for exemption?

DRIDs #9 and # 49 require that all Army utility systems be privatized except when it would be uneconomical or the system is needed for unique security

reasons. Only the Secretary of the Army is authorized to certify when a utility system serving an Army installation is exempt from the DRID requirement for either economic or security reasons. Installations shall follow these procedures when requesting an exemption from privatization:

a. Economic Reasons – utility systems are considered to be uneconomical to privatize under this initiative when:

(1) *There is a demonstrated lack of market interest.* Market interest in privatizing the installation utility systems shall be determined by synopsisizing a public notice in the Commerce Business Daily (CBD), or the equivalent in overseas areas, and other widely available public media. Interest may be created or enhanced by consolidating small or isolated sites together or with larger sites on a regional basis. When there is a lack of response from utility companies or other entities to a public notice of the intent to privatize, the system is considered uneconomical to privatize. At this point no additional privatization study or economic analysis is required. Submit a copy of the public notice and a statement that there were no responses with the request for exemption. Also submit expressions of interest that were rejected or disqualified, if any.

(2) *The long-term cost to the Army as a result of privatization of a utility system would be greater than the long-term benefits, or the long-term cost to the Army for utility services provided will not be reduced.* Based on an Economic Analysis (EA) of the life-cycle costs that considered the following economic circumstances, the installation shall take applicable actions:

(a) When the EA based on conceptual utility proposals has been completed: If the EA results in an estimated privatization cost of at least 25 percent higher than the “should-be costs” for the in-house option, the system shall be considered uneconomical to privatize. “Should-be costs” are the projected costs for the installation to continue to own the utility system, but operated and maintained at the level required of a potential utility provider. Life cycle cost analysis shall be conducted as specified in OMB Circular A-94. The U.S. Army Corps of Engineers (USACE) software program, ECONPAK, used for EA’s conforms to OMB Circular A-94. UPEAST developed by KPMG for OSD also conforms to OMB Circular A-94 and will be used for all ongoing studies.

(b) When an EA based on a Request for Proposals (RFP) is completed: If the EA results in an estimated privatization cost of up to 10 percent greater than the “should-be costs” for the in-house option, the installation or garrison commander shall determine whether privatization warrants further pursuit through negotiations.

© When a complete EA may not be required: A detailed privatization study and EA by a consultant is not required for systems serving remote location or those with minimal annual operation, maintenance & repair costs. For example, installations that expend less than a total of \$100,000 for utility services, excluding the cost of purchased electricity, natural gas, or water, should publish a notice of intent to privatize in the CBD, or the equivalent in overseas areas, and other widely available public media. Interest may also be created or

enhanced by consolidating small or isolated sites together or with larger sites. If there is interest in privatizing, the installation shall initiate procurement action, making every effort to maximize competition under the Competition in Contracting Act. If there is no demonstrated market interest, see paragraph a (1), above.

(d) When the installation relies on federal power allocations: Installations that rely entirely or substantially on federal power allocations must include in their EA analysis consideration of whether privatization of the distribution system would result in the installation losing their allocations, causing higher electric rates. Ensure that the percentage of power supplied to the installation by such allocations, if less than 100 percent, is taken into account in the economic analysis. The request for exemption shall also include a written confirmation from the appropriate Federal Power Administration (FPA) of the impacts of the various privatization options considered on the federal power allocation. While the FPAs (Bonneville Power Administration, the Southwestern Power Administration, the Western Power Administration, and the Tennessee Valley Authority) are all part of the Department of Energy, the application of the policies on power allocations varies and future policy changes may support utility privatization.

(e) When the federal tax on “contribution in aid of construction” (CIAC) or other transfer taxes will have an adverse impact on the economic feasibility: At this time, the Army is unable to obtain a programmatic waiver of the CIAC tax or across-the-board legislative relief from the tax. Until such legislative relief is granted, installations shall assume responsibility for the tax and include it in the economic analysis of privatization as a cost to the government, even though the utility company is the responsible taxpayer. However, if the utility company is agreeable and time permits, the utility company may consider submitting a request for a letter ruling from the Internal Revenue Service (IRS) requesting a ruling that the transfers made in privatizing the utility system constitute nontaxable contributions of capital pursuant to Internal Revenue Code section 118(a). To date, no such favorable rulings have been obtained. In addition, such a request to the IRS entails a user fee (filing fee), for which the taxpayer, i.e., the utility company, is responsible. Contact the DA Tax Advisor in the Contract Law Division of the Office of the Judge Advocate General for further advice concerning the tax aspects of utility transfers.

(f) When the installation is located in a State that has regulatory commission metering requirements: Several State commissions require that when a utility company assumes ownership of an existing distribution system that individual meters must be installed on all facilities and that the metering charges reflect the different type of individual rate classes assigned to each facility. This requirement may jeopardize the ability to competitively procure the utility commodity separately and thereby share in the cost savings of procuring deregulated natural gas and electricity, resulting in higher monthly utility charges. Also, the Army must pay for the metering installation costs.

(g) When the installation utility demands are expected to increase significantly to accommodate a surge in base population or activity due

to a national defense emergency or during mobilization. Some installations, depots and maintenance facilities may have contingency surge and war mobilization requirements that require additional or reserve capacity from a privatized utility system. Reserving capacity to meet the increased utility load expected during a surge or mobilization could incur an additional cost to the installation through increased utility rates. The EA will include all additional costs for reserving any additional surge capacity or mobilization requirements.

b. Unique Security Requirements – The Army has determined that there are no known security requirements that would completely preclude the privatization of an entire installation utility system. However, there may be valid reasons for not pursuing privatization of portions of a utility system, as it creates an unacceptable security risk to classified information or the defense mission of the installation. These circumstances do not require an economic study, but do require other documentation.

(1) *Unique Security Requirements – General guidance.* Submit an installation or garrison commander’s statement describing the defense and national security missions that would be at risk or compromised under privatization of the installation utility system(s).

(2) *Reliability of Local Utility.* It may not be prudent to privatize a system to a single utility that is in serious financial difficulty, has a history of unreliability, or presents an unreasonable risk to the installation because of anticipated low priority, poor maintenance, or adversarial situation.

(3) *Unique Health and/or Safety Requirement.* An actual or potential threat to the health or safety of persons or property on or off the installation, that would jeopardize the defense and national security mission of the installation should some or all utility systems be privatized.¹³

What process should be followed for the re-processing of exempted systems?

Gather study data and update information for the original UP study.

Issue RFP and get proposals from currently interested companies.

Continue the process through the Source Selection Evaluation Board (SSEB) actions and the decision by the Source Selection Authority (SSA).

Make recommendation to privatize if economically supported by the new actions and submit the documentation through the appropriate chain for Congressional notification.

Award contract.¹⁸

What happens when a system that was initially declared uneconomical stays uneconomical upon further review (use of standard RFP and UPEAST)?

The installation will have to identify the costs required to bring the systems up to C2 condition. Once the costs are identified, the installation, MACOM, and ACSIM will have to ensure that the funds are programmed in the appropriate Program Objective Memorandum (POM). The installation and its MACOM will

then develop a “Utility Modernization” program and then execute this program based on the funds received, thereby fixing the exempted infrastructure in a systematic way.¹⁰

IX. Potable and Wastewater Utility Systems

Will privatization of the wastewater treatment system automatically eliminate the NPDES Permit and associated liability?

Permits do NOT go away automatically. The NPDES Permit must be either transferred (40 CFR Section 122.61) or transferred by minor modification (40 CFR Section 122.63). In either case, the permit holder must submit proper notification to the Director (40 CFR Section 122.61(b) (1)). “Notice must include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between them.” It is the Army goal to transfer all permits associated with privatized systems, whenever possible. The installation or MACOM legal counsel should be consulted in order to determine the legal requirements relating to permit transference.



Will pretreatment requirements be imposed on the installation after privatizing the wastewater treatment system?

If the system is transferred to a public sector utility provider and the system is considered a Publicly Owned Treatment Works (POTW), the system may be subject to the Pretreatment Program Requirements in 40CFR Section 403.8. The new owner would have authority to impose pretreatment standards or local limits on Army discharges to the system. The installation or MACOM legal counsel should be consulted when determining the pretreatment requirements upon privatization of wastewater systems.

If the system is transferred to a private sector utility provider, activities that continue to discharge to the treatment system may be subject to 40 CFR 122.44(m). The regulators may consider such activities to be limited co-permittees with the new owner of the system, or the activities may be required to submit a separate permit application. The installation or MACOM legal counsel should be consulted when determining the requirements upon privatization of wastewater systems.

If a wastewater system is privatized, who is responsible for maintaining pretreatment systems (e.g., oil/water separators) that are physically connected to the collection system?

The government may still be responsible for internal discharges, to include pretreatment systems, unless otherwise specified in the transfer documents and/or service contract. This is a site-specific determination and the installation or MACOM environmental program manager and legal counsel should be consulted to make this determination.

Some regulators (State or EPA region) have stated their views that the installation will be required to retain the NPDES Permit, even though the system is privatized, because the Army will retain title to the land on which the system is located. Is this correct?

Wastewater treatment systems will be privatized in such a way that the entirety of the system, including its ownership and operation, will be transferred to a new entity. Because the Army would no longer be an owner or an operator of the system, it should not be required to maintain an NPDES permit. You should consult your installation or MACOM environmental attorney about the specific facts involved in your privatization action in order to determine whether the installation is still responsible for the permit. If you are unable to resolve any disagreements that arise over permits, you and your attorney should seek assistance from the Office of the Judge Advocate General, Environmental Law Division.

What are the benefits to the Army when it privatizes all parts of water and wastewater treatment systems rather than keeping parts of systems that may be more challenging to privatize?

Maintaining Army ownership of parts of a utility system is not recommended for a variety of reasons. First, maintaining the parts of the systems requires continued staffing, management, and operation of the retained systems. Such actions will most likely be costly and could reduce or nullify the benefits of privatizing. Second, maintaining individual systems, in many cases, means retaining NPDES or other operating permits and their associated costs and liability. Third, these systems will require resources to meet current and future regulatory requirements. Experience shows that meeting these requirements can and probably will be extremely costly and will compete with other installation priorities for OMA resources. In most cases, it will be in the installations best interest to avoid retaining parts of a privatized system.

In some instances, wastewater treatment system processes do not have a discrete facility (building). How do you transfer the ownership for a process such as a wastewater surface impoundment (lagoon) and not transfer the ground it is made of?

In a case such as this, the process structure (lagoon) would be considered an improvement or infrastructure (even if it is an earthen structure) and could be transferred to the new owner by easement without transferring the land under and around it (similar to transferring the underground collection system (pipes)). Careful consideration must be given to contract language and easement language to insure compliance with state law in this situation.

Should industrial wastewater treatment systems be considered for privatization?

Generally, industrial treatment systems should be considered for privatization. The decision to privatize an industrial treatment system is best made at the installation level.

Would the Army installation have to include privatized wastewater or drinking water plants releases under the installation RCRA permit or TRI report? Would the privatized water and wastewater facilities have to report RCRA and TRI release data to the installation?

Once privatized, the responsibility for meeting RCRA requirements, including obtaining RCRA permits, will belong solely to the new owner. The new owner is also responsible for TRI reporting to the regulators because they will own the buildings and structures that comprise the wastewater and drinking water plants being privatized. The installation should consult with its attorney or the MACOM attorney to determine whether any specific circumstances involved in the privatization might result in any regulatory reporting requirements following privatization.

Will the new owner of a privatized potable water system be responsible for distributing Consumer Confidence Reports or public notices to all consumers (posting it in barracks, etc.) or will the new owner notify the installation environmental office/DPW and the installation be responsible for distribution?



This will depend on the service contract specifications and coordination with the regulating authority. It will also depend on whether the new owner takes title to the entire distribution system and all its service connections. If so, the new owner will be responsible for providing the Consumer Confidence Reports. The installation or MACOM legal counsel should be consulted to determine who has responsibility for providing these reports.

X. Real Estate Documentation

What real estate documents are involved?

Real estate documentation is required to transfer real property and remove it from the Army real property records. The applicable U.S. Army Corps of Engineers (USACE) District needs to prepare the easements, bill of sale, and/or quitclaim deed for the land transfers. The bill of sale should include an inventory of all government property being transferred to the new utility owner. Amendments to these documents may be required after the contractor assumes responsibility and the on-site conditions verified. Do not include in this inventory any property belonging to the current utility company that has been included in a “system-wide” survey or engineering study. Headquarters Corps of Engineers will approve all real property transfer transactions. The DPW Real Estate office prepares the DA Form 337 to remove all real property inventories from the Army’s records and transfers them to the utility company.¹¹

XI. Environmental – National Environmental Policy Act (NEPA)

What is NEPA?

The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) (NEPA) establishes a national policy requiring that federal agencies consider the environmental impacts of their actions. General types of actions requiring consideration include policies, programs, projects, and activities. NEPA is used to inform the decision-maker and the public of the environmental consequences of a proposed action and its alternatives. The Council on Environmental Quality has issued regulations implementing NEPA (see 40 CFR 1500 et seq.). The Department of the Army has also issued Army Regulation (AR) 200-2 (Environmental Effects of Army Actions, 23 Dec 88) that implements NEPA within the Army community.

What are the types of NEPA documentation?

There are three forms of NEPA documentation: (1) an Environmental Impact Statement (EIS) which is formalized by a Record of Decision (ROD); (2) an Environmental Assessment (EA) which results in either a Finding of No Significant Impact (FNSI) or a Notice of Intent (NOI) to prepare an EIS; or (3) a Categorical Exclusion (CX) which is often documented through the use of a Record of Environmental Consideration (REC).

When is an EIS required?

An EIS is required when a proposed action is a major federal action that will significantly affect the quality of the human environment. If the proposed action will have a significant effect on a particular environmental resource category (i.e. water, air or endangered species), an EIS is required. However, an EIS is not required if only socioeconomic resources are significantly impacted without coincident significant environmental impacts.

When is an EA appropriate?

An EA is prepared when a CX is inapplicable and when an EIS is not clearly warranted. EA's should be generally not exceed 20 pages, and should look at the proposed action in enough depth to have taken a "hard look" at the environmental consequences of an action in order to determine whether the proposed action is significant.

What is a CX and when is its use appropriate?

A CX is a category of actions that an agency has determined has little or no effect on the environment. The Army list of CX's is found in Appendix A, AR 200-2. In order to qualify for a CX, the proposed action must be able to satisfy various screening criteria.

What are screening criteria and how do they work?

AR 200-2 (Section II to Appendix A) lists the screening criteria that must be met before using a CX. The screening criteria are used to identify extraordinary circumstances that make the use of a CX unacceptable. For example, controversial conditions or projects of a greater scope or size are screening criteria that will preclude the use of a CX. Other criteria include actions that will affect historic properties or endangered species. In the latter case, concurrence with the

appropriate regulatory agency (i.e. the State Historic Preservation Officer or the Fish and Wildlife Service) that the action will have no effect will satisfy the screening criteria. The REC should explicitly state how each of the screening criteria has been met. Chapter 4 of AR 200-2 further discusses use of CX's.

What level of NEPA documentation is appropriate for utilities privatization?

Any of the three levels of NEPA documentation is possible, depending upon the facts at a given installation. The proponent of the project should determine the scope of the proposed action. Most situations will likely involve an EA, but a CX may be appropriate in limited circumstances.

What CX's may be available for utilities privatization?

CX A-20 may be used in limited cases. CX A-20 covers "Grants of easements for the use of existing rights-of-way for use by vehicles; electrical, telephone, and other transmission and communication lines; transmitter and relay facilities; water, wastewater, storm water, and irrigation pipelines, pumping stations, and facilities; and for similar public utility and transportation uses." In the typical situation, the Army will convey lines, pipes, poles, and related distribution infrastructure as part of a bill of sale accompanying the easement. CX A-20 can be used to satisfy NEPA in this limited circumstance. Use of this CX is conditioned upon proper application of the screening criteria.

When is CX A-20 not appropriate?

CX A-20 is not appropriate at a Base Realignment and Closure installation, as the disposal and reuse NEPA document will examine that transfer. The CX is not appropriate when the Army conveys underlying fee title for a utility system. Nor is the CX available when an entire plant or other significant facilities are being transferred, as this CX will cover only the transfer of the utility distribution infrastructure (i.e. pipes, lines and similar equipment) being conveyed via an easement. The CX is similarly not available even upon conveyance of a distribution system where the new owner plans significant new additions to the system or will abandon the old system and build new infrastructure in the easement area. An EA or EIS will be required in these situations. Once again, use of this CX is conditioned upon proper application of the screening criteria.

When must the public be notified of a NEPA action?

AR 200-2 requires public notification in the case of EA's or EIS's. Publication would be done locally. Publication of REC's is optional.

What is segmentation under NEPA?

Segmentation is impermissible under NEPA. It occurs when an action is examined in pieces when it should be examined in a larger picture. Segmentation usually occurs when several NEPA documents, such as REC's or EA's, are used in order to avoid completing an EIS. For example, if an installation plans to dispose of a water sewage treatment plant and all the pipes for that system, it should examine the entire action in an EA or EIS. CX A-20 is inappropriate. In another example, if an installation plans to dispose of more than one utility distribution system (i.e.

wastewater, electrical), separate NEPA documentation may be used at the installation's discretion. To justify separate NEPA documentation, the utility systems should have "independent utility" and not be dependent upon the other systems being disposed. If separate REC's or EA's are used, the documents should discuss the other proposed actions in the "cumulative effects" portion of the document.

At what point in the process should NEPA documentation be prepared and completed?

The installation should begin to collect information and prepare NEPA documentation as soon as it has identified systems that are candidates for privatization. Generally, NEPA documentation must be completed prior to the commander making a decision that will constitute an irretrievable commitment of resources. In utilities privatization, the commander first initiates a privatization study. When the inventory is completed, this information is presented to the commander to make a decision to proceed to competitive or sole source procurement. NEPA documentation does not have to be completed at this point unless there is a binding decision to proceed to privatization. NEPA analysis should, however, be progressing. Once the procurement process is completed, the economic analysis can be finalized and the commander is then faced with the decision to proceed to privatization and how that is to be accomplished. It is this decision that normally requires a finalized NEPA document. This timing can vary with the particular situation.

What are "plant" or "significant facilities" that would preclude consideration of use of CX A-20?



Significant Natural Gas Power Utility Plant, Structures and Facilities – In general, the Army does not have natural gas generation plants or facilities.

Significant Electric Power Utility Plant, Structures and Facilities – includes power generating equipment and prime movers, including steam and gas turbines, diesel, natural gas, and gasoline engines. Types of power generating

facilities include: coal-fired, oil-fired, gas-fired, nuclear, photovoltaic, hydroelectric power, and standby and uninterruptible power supplies.

Significant Sewage and Wastewater Treatment System Plants,

Structures and Facilities – includes primary treatment plants, septic tanks and drain fields, raw sewage lagoons and oxidation ponds, drying beds, and secondary and advanced levels of treatment. Wastewater treatment systems may treat industrial wastes, laundry wastes, sanitary sewage, or domestic sewage.



Significant Water Supply, Treatment and Storage System Plants, Structures and Facilities – includes a treatment plant that, in its entirety, consists of a combination of some or all of the following equipment to treat potable water before supply to users: screens, flow meters, filters, settling basins, chemical feeders, flocculators, aerators, pumps, chemical storage, and controls. Typically a treatment plant will include a clearwell for treated water storage. Reservoirs, wells, and intake structures are also significant facilities.

Is NEPA documentation required for a utility services contract?

CX A-6 is normally appropriate for this type of action. A REC is not required, but can be used at the discretion of the installation.

In addition to NEPA documentation, what other paperwork is required for utilities privatization?

For conveyance of an easement and associated utility distribution infrastructure, a DA Form 337 is prepared. Where the conveyance involves a transfer of title to the land or more of an interest than an easement, several documents are required. This package requires a Finding of Suitability to Transfer (FOST). If the transfer is being made to another federal entity, an Environmental Condition of Property (ECOP) is used in lieu of a FOST (See AR 200-1). An Environmental Baseline Survey (EBS) is also required (See AR 200-1). Finally, a Report of Excess (ROE) is required if the proposal involves a transfer of title to the land (See AR 405-90). Regulator concurrence under the Community Environmental Response Facilitation Act (CERFA) is not required.

XII. Environmental – Environmental Baseline Survey (EBS)

What is an Environmental Baseline Survey (EBS)?

An EBS is a study of the environmental conditions of Army controlled properties or proposed acquisitions, focusing on “hazardous substances¹” or other regulated hazards. The EBS provides a profile of the cleanliness or contamination at a particular site and adjacent properties at a particular moment in time. An EBS generally consists of an archival search of available federal, state and local records, interviews, and inspection of the property.

What is the purpose of an EBS?

The purpose of the EBS is to identify and assess the condition of real property at the time of transfer out of the government’s possession. An EBS is used to identify the potential contamination liabilities associated with real property transactions and to support a Finding of Suitability to Transfer (FOST) or lease (FOSL). The EBS fulfills the government’s requirements under 42 USC 9620(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA) to identify the type and quantity of hazardous substances stored, released,

¹ Hazardous substances are defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

or disposed of on any real property being sold or otherwise transferred from federal ownership.

How far back in time should the EBS research?

It is recommended that the extent of all reasonably available records be used as a guide in focusing the period of time that the EBS should cover. When the Army acquired the property or when the utility system was installed may be an appropriate period of time within which to focus the search. As a minimum, the search will cover the past sixty years.

What are FOST/FOSL's and how does the EBS relate to them?

A Finding of Suitability to Transfer (FOST) is the Army's mechanism for determining if a property is suitable for transfer. It is required, pursuant to AR 200-1, for sales divesting title. {An easement, however, is not considered a "sale divesting title," therefore most utility transactions will not require a FOST, unless a further interest were to be conveyed or its preparation were otherwise warranted.} Similarly, a Finding of Suitability to Lease (FOSL) is required for a lease. An EBS necessarily precedes and supports the FOST/FOSL and is the primary mechanism to identify the potential environmental contamination liabilities associated with real property transactions and provides a standard against which to measure post transfer contamination.

What is the scope of property I need to include within my EBS to support a FOST for a utility system?

An EBS covers the property to be transferred, leased or included within the transfer area. It will examine where hazardous substances, petroleum products, or special hazardous substances have been stored, used, or spilled on the property. In case of utilities, this may mean plants, facilities, transformers, substations, chemical treatment systems, or other areas or buildings where hazardous substances or hazardous conditions may have been stored or exist. The EBS may also examine adjacent properties in order to determine if contamination has migrated onto the subject parcel.

What sort of regulator or public comment and review are required for FOSTs?

Although there is no requirement for regulator coordination or approval for an EBS or FOST prepared to support the transfer of property at an active Army installation, it is recommended that a 30-day comment period be given.

What contaminants should an EBS for utility privatization potentially address?

First, the EBS must gather data on release and disposal of hazardous substances (may include chemicals used at wastewater treatment systems planned for privatization). If real property is



being transferred, the EBS must further collect data on storage, and give notice of that storage to the transferee.

Second releases of petroleum products and their derivatives will also be examined and included in the EBS. Although the law does not require non-BRAC properties to examine these issues, this information will give the installation a more complete picture of the environmental baseline, and is incorporated to the extent that an EBS is prepared.

Third, non-CERCLA related environmental or safety issues may be known or suspected to exist on the property. Such hazard conditions would include the presence of asbestos, radon, unexploded ordnance, lead-based paint, and PCBs.

How should the EBS cover contaminant migration from adjacent properties?

There is no legal requirement to address adjacent properties in the non-BRAC context, although in some circumstances, such an examination may be merited. It is recommended that a “reasonable man” approach be used. If there is a reason to believe a release occurred from adjacent properties in the past, the EBS should do further examination. Otherwise, the current conditions and information at adjacent sites should present an adequate picture of the impacts. If adjacent properties are examined, these areas will not be characterized according to the ECP category.

How do I perform an EBS in support of utilities privatization?

A recommended approach is to use the model statement of work (SOW) developed by ACSIM and DESC. The model SOW may be used to the extent appropriate to the level of complexity of the EBS to be performed at the installation.

In addition to an EBS and FOST or FOGL, what other paperwork is required for utility privatization?

The conveyance of property is a federal action that must be reviewed under the National Environmental Policy Act (NEPA) for consideration of environmental consequences. As such, NEPA documentation appropriate to the privatization effort must be completed before making the final decision to dedicate irretrievable resources to privatize a utility system. Concurrent with the NEPA process consideration for cultural and natural protections may invoke requirements under Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Endangered Species Act (ESA). Whether and what additional “paperwork” is required will depend on numerous factors including plans for future ground disturbing actions or other undertakings and the amount of real estate interest conveyed in the privatization. Future guidance will address NHPA and ESA requirements for utility privatization.

For conveyance of an easement and associated utility distribution infrastructure, a DA Form 337 is prepared {see CERRE-MM, SUBJ: Revised Guidance – Privatization/Disposal of Utility System at Active Military Installations, 10 Oct 1997}. A bill of sale may also be used at some properties. The DA Form 337 can facilitate environmental restrictions and protections by limiting the actions that the Grantee can undertake without Army permission. It can also be used to inform the

Grantee of the presence and location of historic and cultural resources, critical species habitat, and contaminated areas.

Finally, a Report of Excess is required if the proposal involves a transfer of fee title to the land {see AR 405-90}. Regulator concurrence under the Community Environmental Response Facilitation Act (CERFA) is not required.

How does the NEPA process relate to an EBS?

The EBS may supply data to support relevant sections of a NEPA document. The EBS may be incorporated into the NEPA document in its entirety in an appendix, in portions woven into the NEPA document, by reference in the NEPA document, or by some combination thereof.

How should other non-CERCLA related hazards be addressed in the EBS?

As these items {i.e. asbestos, lead based paint, radon, unexploded ordnance, PCB's} are not CERCLA hazardous substances, they should be considered in ECP Category 1. The BRAC created designation of "qualified" parcels, however, will be used in EBS development. For example, a property containing only lead based paint will be considered ECP Category 1, Qualified. Where the "Qualifying" non-CERCLA hazard has been completely removed, no designation is required. Sealing the hazard or encapsulating it is insufficient. There must be documentation indicating that the hazard has been fully removed.

Exceptions or specific considerations regarding non-CERCLA hazards follow:

703. Pesticides

ISSUE: Should a parcel that has received routine pesticide/herbicide application {for example, at a golf course} be considered a Category 1 parcel or be placed in another category?

DISCUSSION: Routine pesticide/herbicide use, applied in accordance with manufacturer's directions, is exempted from CERCLA and falls within the Category 1 designation. This does not apply, however, to the spraying of waste oil as an herbicide. Such an application would cause the parcel to be placed in another Category. Spills or disposals of pesticide and herbicide are also reasons for disqualification from Category 1.

704. PCBs

ISSUE: What is to be done with transformers with respect to what should be on the map, and what information should be presented in the text?

DISCUSSION: Report and map all polychlorinated biphenyl (PCB)-containing transformers that have leaked. Report and map all designated areas where out of service PCB containing transformers, have been stored. Document, in text, all transformers, regardless of service, content, etc., but do not show on a map unless it meets one of the criteria listed above.

ISSUE: How should a parcel that contains PCB laden transformers be identified? Should in-use transformers or transformers in storage, above a certain level of PCB content, or both, disqualify a parcel from being designated as Category 1?

DISCUSSION: The action level for most States for PCBs in transformers is 50 ppm or greater; however, transformers which are in use and not leaking are not considered to pose a threat to human health or the environment at any concentration of PCB content. Therefore, parcels that contain in-use transformers which contain PCBs but which are not leaking can be designated as Category 1. Where a transformer is leaking, and contains PCBs in excess of 50 ppm, then the parcel should be designated as Category 4 or 5 instead of Category 1. Any storage of a transformer containing PCBs in excess of 50 ppm will result in a parcel being designated as a non-CERCLA hazard qualified parcel. The 50-ppm action level is applicable in most States; state specific criteria should be applied where it is more restrictive than the 50-ppm level.

ISSUE: The availability of PCB transformer data may be a problem. In some instances there are reports that transformers were removed and disposed, however, good maps or documentation of exactly where those transformers were located are unavailable.

DISCUSSION: In those cases, focus on available data showing levels of PCB. If levels of PCB are not available the “P” designation for “possible” may be used. Where no map data exists for former transformers, a note in the EBS stating that further data was not available for approximately xx {provide number} transformers which were onsite during a certain period of time should be included.

705. LBP

ISSUE: Lead-based paint surveys may not be complete at all installations or else “random checks” may have only been performed. What should be done in these cases?

DISCUSSION: If a complete lead-based paint survey has not been conducted, assume that buildings constructed prior to 1978 possibly contain lead-based paint. If no survey data is available, a building list with year of construction will be used and all pre-1978 buildings will be categorized as a Qualified parcel with a “L (P)” for possible presence of lead-based paint.



706. UXO

ISSUE: What constitutes UXO?

DISCUSSION: UXO is defined as any military munition which has been primed, fuzed, armed, or otherwise prepared for action, and which has been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to friendly operations, installations, personnel, or material and remains unexploded either through malfunction or design or for any other cause.

ISSUE: For mapping purposes, should range fans be displayed?

DISCUSSION: Detailed range fans do not have to be displayed on the required EBS and CERFA maps; however, the entire area where UXO is considered to be present should be displayed as a qualified parcel. If accurate range fan maps are available, it might be useful to include them as an appendix to the EBS report.



How should coal storage piles be categorized?

Coal storage piles should not be excluded from Category 1 unless data shows that contamination is present.

Should chlorofluorocarbons (CFCs) be investigated as part of the EBS process?

Since CFCs are listed in the CERCLA Hazardous Waste Table, the investigation of CFCs and other refrigerants that are contained in equipment used for cooling or other purposes is relevant, and may affect a parcel category if there is evidence of a release.

How should boundaries of a “parcel” be defined, especially in undeveloped areas where a groundwater plume exists?

Designate boundaries using best-known extent of contamination. Where boundaries are undefined, provide best estimate, but note in the text that boundaries were not surveyed, or precisely defined by data etc. For contamination plumes, provide rationale for boundaries. In the case where a plume is fluctuating in size and location, for example, where groundwater pump and treat is in place, define the boundary in its largest extent {even though treatment may have reduced the plume size, contamination was present at one time}.

How should areas in which there has been uncontrolled dumping be designated?

Uncontrolled dumping areas may be found in remote areas during review of aerial photos, a site visit, etc. Some of these areas may contain or may have previously contained material with hazardous substances {e.g. appliances, empty drums, etc.}. Other areas may have contained debris that, from visual inspection of the surface, did not show signs of hazardous substances.

Uncontrolled dumping areas that show no evidence of containing hazardous substances should not be automatically disqualified from Category 1. The text that accompanies these parcels should note the degree to which an area has been inspected {e.g. drive-by, walk through} and note that what has been dumped at the site is unknown. Additional inspection of some areas may be required, for example if a site was observed in an aerial photograph, a site walking tour may be required.

How should pipes and other distribution infrastructure that contain hazard substances be characterized?

Several of the installations have systems or process equipment that involve the use or transport of hazardous materials or petroleum products. In each of these cases, the contaminant is integral to the functioning of the equipment in the same way petroleum products are to a vehicle engine. Areas upon which there are transport systems and/or process equipment that handle hazardous material or petroleum products, and upon which there have been no releases or disposals, should be considered as Category 1 parcels. Systems that merely transport hazardous substances or petroleum have not, if properly maintained, released the transported material to the surrounding environment. The focus of the EBS is on the condition

of the land, not the fixtures appurtenant thereto. A parcel containing such systems should be considered disqualified from Category 1 only if there is evidence of release from the equipment to the surrounding land.

How should property containing sewer systems, storm water drainage systems and surface water drainage systems be characterized?

At some installations, there is a real potential for transport of hazardous materials from the handling areas by way of drainage systems. Sampling along some of these systems may indicate contamination. The system could also be an unintentional carrier of contaminated sediments. Hazardous substances in sewer and drainage systems, for example, do not represent a release, any more than an oil/water separator that is routinely “sumped” out of oil represents release. Therefore, such systems should be noted in the report but a parcel should not be disqualified from Category 1 on this basis unless in areas where information or sampling has indicated release of contamination from the system at some specific point {e.g. cracks, etc.}.

If the EBS reveals a release of a CERCLA hazardous substance for which there has been no “response action,” will transfer be precluded?

If an EBS finds that real property scheduled for transfer falls into ECP category 7, additional investigation and site characterization must be required before transfer can occur by deed. {Most properties, however, will not involve a transfer by deed.} Any property of ECP categories 5 and 6 can be transferred using Early Transfer Authority under CERCLA Section 120(h)(3) I, which allows the Army to transfer property before all remedial action has been taken as long as approval is obtained from the EPA or state Governor.

How does this guidance apply at OCONUS locations that are privatizing utility systems?

According to AR 200-1, Paragraph 15.6, EBSs are not required outside the U.S., its territories or possessions. The decision to do an EBS OCONUS is within the discretion of the command.

Is an Environmental Baseline Survey (EBS) required for privatizing utilities?

It is the Army’s policy to prepare an EBS to determine the environmental conditions of properties considered for acquisition, outgrant or disposal. According to AR 200-1, Paragraph 15-6, real property transactions included in this requirement are acquisitions, sales divesting title, transfers of jurisdiction between agencies, and leases.

Yes, when the privatization action involves an out-grant or disposal of real estate.

No, when the privatization action involves other types of transactions such as easements. However, an EBS may still be prudent.

In general, you should prepare an EBS when the utility transfer will involve more than the distribution infrastructure, where there is knowledge that an environmental condition may exist, or in similar circumstances.¹

XIII. Environmental – General

How should Lead-Based Paint (LBP) be addressed during disposal of utilities?

The Army has adopted interim guidance relating to LBP. (See DAIM-FDF-E, SUBJ: Guidance for Lead-Based Paint Hazard Management during Transfer of Army Property, 14 Aug 98.) The Army does not consider LBP that flakes or chips off structures due to weathering or normal maintenance to be a release of a hazardous substance to which the Army must respond under CERCLA. *The Army addresses LBP on transferring property only in residential areas under the authority of the Residential Lead Based Paint Hazard Reduction Act (Title X).*

Accordingly, installations should disagree if a regulator insists that LBP be cleaned-up prior to transfer, unless such clean up is pursuant to Title X. Contact your local Staff Judge Advocate or the Department of the Army Environmental Law Division



should this issue arise. The transfer documents should provide a notice of LBP. If abatement activities are required, installations should negotiate with the transferee to conduct those activities.

How should Asbestos be addressed during disposal of utilities?

Installations should undertake appropriate efforts to determine the presence, location and condition of asbestos containing material (ACM). There is no general requirement to abate ACM prior to transfer and installations should only consider doing so if they have identified any direct and real hazard to human health associated with the ACM. Abatement of hazards could be passed through to the transferee through negotiation and appropriate contractual provisions. Otherwise, installations should communicate all information regarding the type, location and condition of ACM, including potential hazards, to potential transferees. Installations should contact their Environmental Law Specialists to determine which State or local requirements regarding asbestos may be applicable prior to transfer.

How should PCBs be addressed during disposal of utilities?

The Environmental protection agency has developed complex regulations governing use, management and disposal of PCBs under authority of the Toxic Substances Control Act. Executive Order 12088 subjects federal facilities to TSCA requirements. PCBs are often found in equipment, transformers, capacitors and wastes that include paints; waterproofing materials, light ballast and dielectric fluid. Installations, prior to transfer, should make reasonable efforts to identify equipment that may contain PCBs in amounts regulated by statute and regulation. They should further ensure that they have complied with existing requirements for use, marking, storage, registration, reporting, record keeping and manifesting. This information should be made available to potential transferees. Installations should consult with their Environmental Law Specialist to determine whether current compliance requirements are being met.

What happens to installation environmental compliance permits upon privatization?

Permits under the Clean Water Act, the Clean Air Act, and other statutes may or may not be transferable, depending upon the particular state's laws and regulations. In addition, installations may be required to obtain permits as a user of a particular utility. Your Staff Judge Advocate should be consulted on these issues.

Does the Community Environmental Response and Facilitation Act (CERFA) have any applicability to privatization actions?

No, CERFA is an amendment to CERCLA that requires the identification of clean parcels at base closure and realignment (BRAC) sites. Since privatization actions are not BRAC actions, there is no requirement to make CERFA clean parcel determinations, nor is there any requirement to gain regulator concurrence on those determinations.¹

XIV. Defense Energy Support Center

How has the Army and the Defense Energy Support Center (DESC) been partnering?

Bundling in a single acquisition multiple Army systems across MACOMs in a geographical region following the prioritization scheme above.

Coordinate and solicit as a single/multiple acquisition utility systems across Service and/or MACOM lines. (Examples: Tidewater Virginia – Army & Navy; Texas, TX – Army, Navy & Air Force).

Issuing a Notice of Interest in CONUS to identify potential contracting sources and obtain information for planned privatization of Army utility systems.⁷

What role does the Defense Energy Support Center (DESC) play in the utilities privatization effort?

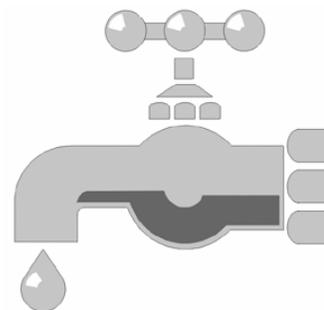
The Army works with the DESC to provide contracting and negotiations support to Army installations. With the agreement of the MACOM and the installation's Directorate of Contracting (DOC), DESC, using the installation's or consultant's prepared technical scope, develop and issue the RFP; analyze the offers; make recommendations to the installation commander; and award the utility privatization contract.

The Army strategy, capitalizing on DESC's Inter-Service availability, is to bundle utility systems when possible across installation, MACOM, and Service lines in a broad geographical area.¹

XV. Water Rights

How do we handle water rights?

Installations can privatize their water systems without relinquishing or transferring water rights as a condition of privatization. A water right, which is a property right similar to real estate, is a right to use water rather than ownership of the water itself. The authority to



divert or pump water on behalf of a water right owner (the Army) may be assigned to a water distribution provider without relinquishing any ownership in that water right.

Water is a vital resource everywhere in the United States. Each state has a system of water laws that defines the legal status of water rights and regulates the use of surface and groundwater. Water rights laws vary significantly from state to state, but generally fall into one of three doctrines of water law: riparian, prior appropriation, and hybrid. Installations must become familiar with state water laws and the Department of the Army memorandum, Policy Guidance on Water Rights at Army Installations in the United States, November 24, 1995 to ensure that the Army's rights to water are protected, whether or not the water system is privatized.

Water rights must be considered in the privatization study and economic analysis for privatizing installation water systems, from both the economic and the national security perspectives. Water rights may be lost by abandonment or forfeiture and it is incumbent on the installation to ensure that privatization of the water supply system is accomplished without adversely affecting these rights. The installation should already have documentation of its water rights, however, if the documentation is lacking or incomplete, then a determination must be made as to the water rights held under state law and past real estate acquisition.

Installation staffs (Contracting, Real Property, and Judge Advocates) shall consult with their MACOM counterparts and the Corps of Engineers Real Estate Offices and receive preliminary concurrence prior to entering into any agreements that involve an assignment of authority to exercise water rights to a private or municipal entity. The Judge Advocate General's Litigation Center, Environmental Law Division can provide legal assistance regarding water rights.

In summary, installation water systems that use Army-owned surface or ground water supplies can be privatized. But it is essential that installations understand water rights law and take no action to privatize water systems that could jeopardize Army interests in those water rights. Department of the Army memorandum, Policy Guidance on Water Rights at Army Installations in the United States, Nov 24, 1995 provided detailed instructions for protecting Army installation water rights. The Army will assert all claims and take all actions necessary to preserve water rights to surface and groundwater used on installations. This includes Federal reserved rights for present and foreseeable future needs for water on land reserved from the Public Domain, where the use is necessary for the primary purpose(s) of the reservation. Finally, water rights may have an impact on the economic feasibility of privatizing the water system as well as the ability of the installation to carry out defense and national security missions.¹³

XVI. Standard and Non-Standard Clauses

What are some of the standard clauses that apply to regulated and non-regulated providers, protect the Government's interest, and reduce the Government's risks?

Price re-determination for non-regulated utility companies – The Army can periodically renegotiate contract prices. The process is described in the Federal Acquisition Regulation (FAR) section 52 and considers operation, maintenance, and capital improvement costs

For regulated utilities, local and state laws approve the tariff rates. The Army receives the best customer tariff rate for its class of service.

Emergency response and catastrophic system failures – The new owner must respond in case of emergencies to restore service and to repair/replace the system.

Coordination of outages and work on post – The installation is assured of timely response to normal utility service interruptions.

Continuation of Services – State laws require regulated utilities to continue providing services pending resolution of contract disputes. For non-regulated companies, FAR Section 33 governs contracts and requires the contractor to continue to provide service pending resolution of any disputes.⁸

What is the Army’s policy on the use of non-standard “Right to Re-Purchase the system” or “Reversion” clauses in utilities privatization solicitations?

Use of these non-standard clauses is contrary to Army policy for privatizing the utility systems. Standard FAR clauses address the unlikely event of a termination for default and are approved for use in solicitations. The installation’s specific concern of a utility privatization contractor’s potential default should be addressed by including terms and conditions in the Bill of Sale and Easement documents which provide the Government with the right to step in and operate the system until a new provider can be selected. The Army can reduce risk on the industry and the government and address the installations’ concerns for the future by using standard clauses in the solicitations, advising the offerors of the inclusion of the Government’s ability to operate in the event of contractor default, and including those terms in the real estate documents.¹⁷

XVII. Response Time

What do we do about response time?

Installations should subscribe to the utility supplier’s standard practice response time when critical installation missions are not impacted. Regulated utilities operate under Public Utility Commission (PUC) mandates for restoring service in a prescribed hierarchical order. You may try to negotiate a quicker response time for key mission-critical facilities as an unregulated service, which must be approved by the public utility commission, and will most likely cost extra. Installations should clearly explain their mission requirements and service needs (the “what”) in the RFP scope of work and leave the method (the “how”) up to the utility provider. Providing back-up generators or a separate alternative feed may be a more economical solution, but leave that up to the offeror to include in the proposal.¹¹

XVIII. Inventory

Why inventory the utility systems?

Trying to include a complete and detailed list in the RFP/contract, of the equipment that will be conveyed to the successful offeror, may be expensive, time-consuming, and a duplication of what any successful contractor will do on its own. The RCI contractor should have already factored in an assessment and inventory that will play important roles in the capital improvement and operations and maintenance plans. Instead, the installation could issue a memorandum of understanding (MOU) for the ancillary equipment conveyed. Avoid using generic term language describing the equipment, e.g. customary tools found in this trade, but be specific. If you already have an inventory done during a consultant's study, use that if accurate and complete, but be sure to clearly identify any equipment already owned by the local utility, which might be located at transformer stations and similar locations.¹¹

XIX. System Value

What is the "Value" of a utility system?

Generally for privatization purposes, our utility systems have no value, according to the Army Audit Agency. If you evaluate the utility system salvage value minus the restoration cost, the resultant nominal amount (typically around \$1.00) is the valuation for real estate documentation purposes only.¹¹

Is this value different from Utility System "Value-in-Use"?

In some situations, where an installation utility system has the potential of being expanded to serve many more customers, especially outside the installation boundaries, that system has a "value-in-use" (business value or fair market value) to a public utility entity. This value might be taken as a credit towards monthly utility charges. Our privatization initiatives should not include any attempts to share in future increases in value or profit that the utility contractor may gain through extensions or expansion of the former government-owned utility system. To share in future profits, the Army must also be willing to risk sharing in future losses. As the system improves and expands, all customers, including the Army installation will benefit from more reliability and lower overall rates.

You need to strike a balance when you negotiate the value-in-use of the Army utility system. Avoid seeking the highest value-in-use, because when a utility company pays the installation for the value-in use of the Army system (either through a lump sum payment or monthly credits towards the bill) they usually obtain the money through financial institutions. Utility companies revenues are generated from customers on a revenue neutral basis (cost should not affect other customers not responsible for the cost). Because of this, the utility company will charge the installation back through their rates for the value-in-use that they paid up front, plus interest. On the other hand, accepting the lowest value-in-use may lower the utility rate, but trigger something known as CIAC (Contribution-in-aid of



Construction) Tax. CIAC tax is another utility privatization expense that must be factored into the economic analysis.

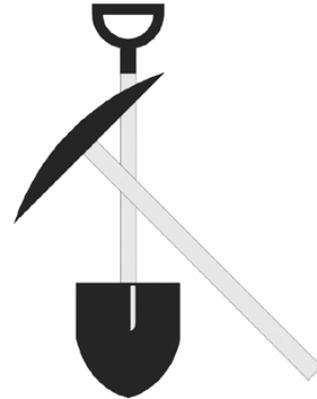
It is important to note that those installations that have a wastewater treatment plant or water supply source and treatment plant that the discharge permit or water allocation for those plants may be worth more than the physical plant and collection/distribution systems themselves. Efforts should be made to recognize the economic worth of these assets when determining the “value-in-use.”¹¹

XX. Contribution In Aid of Construction (CIAC)

How does Contribution In Aid of Construction (CIAC) tax issue affect utility privatization and what the Army is doing about it?

Transferring the utility system ownership at a nominal cost of \$1 is often the most economical alternative for all parties. However, problems arise from Section 118 of the Internal Revenue Code, which includes the transfer of funds and property in the gross income of a company and subject to federal taxation.

The CIAC tax another layer of risk, additional cost to the Army, and uncertainty for the private sector. The Army is still working this issue.¹ *Currently, the Army has decided that CIAC is not to be included in the EA. However, the Army will still reimburse the winning contractor if the contractor has to pay CIAC.*



Does the Army have relief from the Contribution In Aid of Construction (CIAC) tax on utilities?

No. DOD is working with IRS to resolve this issue. There is no relief in sight at this time. You should include any CIAC tax cost element identified in an offer in the economic analysis of the alternatives. *Currently, the Army has decided that CIAC is not to be included in the EA. However, the Army will still reimburse the winning contractor if the contractor has to pay CIAC.*

XXI. Residential Communities Initiative (RCI)

How does the Residential Communities Initiative (RCI) fit into Utilities Privatization (UP)?



The RCI does not adversely impact the utilities privatization process; rather it can be handled as a complimentary process. If your installation is involved in RCI and UP at the same time, ensure that the personnel involved in both processes are fully coordinating. Knowing where a new housing area is planned for new construction

can prevent unnecessary costs and avoid potential future conflicts while developing requirements for a privatization contract that could extend into the next 10-50 years.

² It's always best to privatize your utilities before you embark on an RCI Initiative. When that's not possible, any new utility systems in the RCI footprint are the responsibility of the RCI developer, but should be installed by, or under the supervision of, the ultimate or anticipated utility privatization contractor. It makes no sense to have the RCI developer build new utility systems and turn them over to the installation, which then has to turn around and try to privatize them. There is no assurance that the local utility provider will accept these systems, if they were built without its input or involvement. Military Construction, Army (MCA) funds, if already programmed and appropriated for a utility system upgrade/improvement, may be used instead to facilitate a utility privatization initiative by paying up front for what is usually known as a "connection fee" The costs of constructing new utilities in conjunction with an RCI project are not considered connection fees and are the responsibility of the RCI.¹¹

XXII. Base Realignment and Closure (BRAC)

How does Base Realignment and Closure (BRAC) fit into Utilities Privatization (UP)?

BRAC and UP are conducted under separate authorizations. If an installation comes under BRAC for closure or realignment, any privatization contracts will be included in the "buy out" costs for the installation. If the installation is undergoing a BRAC action and a privatization action at the same time, the utility systems will normally be handled under the BRAC and Local Reuse Agency (LRA) authorities. If an installation is already scheduled for closure under BRAC, it does not fall under DRID #49 for privatization.²

XXIII. Two-Step Model

What is a good synopsis of the 2-step model?

The two-step model was developed based on experience at Fort Campbell (electric system). The offers ranged from 30% to 50% more than the Government's "should cost" figure. Part of the reason for this was that the Government did not provide sufficient information for the offerors to come with a good bid. The effort resulted in an exemption.

The two-step process is:

- b. Offerors' proposals contain a price for the system survey and a work plan and a price for ownership of the system. An award is made to the best offeror.
- c. Contractor is paid to update inventory, identify deficiencies, prepare work plan. Contractor then updates his cost proposal and then this is compared to the Government's "should cost". A privatization or exemption decision is made based on this comparison.



The two-step process is being used at Forts Bragg, Campbell, Stewart, and Irwin.²⁰

XXIV. Commodity Acquisition

Is the acquisition of the commodity tied to privatization?

No, these two acquisition actions (purchase of commodity and privatization) are separate.¹

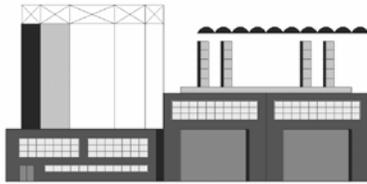
XXV. Franchised Utilities

Where there are state-franchised utilities now serving Army installations, is there a conflict with the competitive requirements of 10 USC 2688?

10 USC 2688 requires competition when more than one utility entity expresses an interest in owning and operating a specific system. Franchise requirements vary from state to state and utility type. Some States have franchise restrictions on the commodity only, while others restrict the ownership and distribution as well. To the extent of these franchise restrictions, the Army will use competitive procedures in order to get the best value while privatizing these systems. Utilities operating under a franchise have a duty to serve all customers within their assigned territories and are rewarded with guaranteed returns on their investment. When we privatize with an unregulated utility, the contract must be structured to provide all the protections that the state utility regulatory commissions would have provided.¹

XXVI. Privatized System Examples

What are some examples of successful utility privatization efforts?



Fort Benning, Georgia, privatized its 133-mile electrical distribution system and transferred ownership to a local utility in June 1999. By partnering with industry and privatizing this system, Fort Benning benefits from state-of-the-art technology found in the electric power industry such as power distribution monitoring and an automated power outage reporting system.⁷

Aberdeen Proving Ground (APG), Maryland, transferred in July 1999 ownership of its water and waste water pipes and the water and waste treatment plants to the local municipality (Aberdeen). Property was transferred and easements were provided to Aberdeen. This is a “win-win” situation for both parties. The installation now obtains waste treatment services from a qualified treatment plant and the city has sufficient water capacity to serve its citizens for the foreseeable future.⁷ Aberdeen’s plan, put into effect, was to abandon APG’s wastewater treatment plant and treat the water through their plant. City is keeping APG’s water treatment plant and will use it to service APG and part of the local

community. APG kept the water rights and licensed the city of Aberdeen to use the rights.²²

Fort Sam Houston, Texas, transferred ownership of its natural gas system to the local municipality in September 1999. The new owner is incorporating the network of gas distribution lines into its own extensive system, and will provide all necessary future maintenance and upgrade to the system.⁷

A competitively solicited contract to privatize the water, wastewater, storm water, natural gas and electrical systems at Fort Hamilton, NY, was awarded for \$25M to ENRON Federal Solutions, Inc. on 2 Dec 99. The contract provides for transfer of ownership of the systems, extensive capital improvements in the first year, and a 10-year period of operation and maintenance services.⁷ ENRON Federal Solutions, Inc. is a private, non-regulated utility entity. The utility service contract also contains an additional protection for the Government. If the current owner wants to sell the infrastructure to a third party, the Government has the right to approve/disapprove the new owner. The Government's decision is final and is not subject to the standard disputes clause.⁹ ENRON would not accept any of the four (electric, water, waste water, and natural gas) systems in place. Therefore, the old systems were abandoned in place and ENRON built replacement systems. Finished with 100% of the natural gas, electric, and water systems and completed approximately 60% of the waste water system. The real property was never actually transferred to ENRON. ENRON did not provide the commodity in any of the 4 systems.²²

XXVII. Utilities Privatization – General

Are there any examples of completed procurements or documents available for our help?

We currently do not have any of these documents on the web, but you may contact DESC, Fort Worth District, Baltimore District, Huntsville Engineering and Support Center, or Kansas City District as these agencies have been involved in drafting and issuing privatization contracts.

What about the Federal Power Allocations? How are they affected?

OSD is working with some of the Federal Power Management Agencies to determine if and how installations may retain their allocations after privatization to the private sector. Currently SWAPA has determined that installations will lose their allocations if we privatize, so the Secretary of the Army has approved exemptions for two installations, Fort Sill and McAlester. WAPA may be interested in working with the Services on the issue.

Do the current utility plant employees at my installation have the right of first refusal?

The utility plant operations at many of the Army installations are already contracted out. Under privatization, the Army is transferring the ownership of the systems to private sector companies. The privatization negotiations include the placement of

all current employees. Under the current legislation, A-76 rules do not apply to utility privatization actions.

Does current legislation contain blanket authority for the conveyance of land?

In FY00 Congress authorized the Secretary to transfer the land when conveying utility systems under a privatization initiative. The Army may use this authority only if necessary such as in the transfer of wastewater treatment plants. The authorization reduced the previous Congressional approval requirement that could take as long as two years.

How do I pay for the utility privatization studies at my installation?

ACSIM has provided funds in the past 3-4 fiscal years and has programmed funds through fiscal year 2005 for the utilities privatization effort (completion of studies, development of RFP, consultant support, etc.).

What is the contractor's responsibility to do due diligence regarding federal, state and local regulations?

The contractor is required to conduct his own research into the federal, state, and local regulations as they pertain to the operation of any water or wastewater plant, NDEPS permits or Safe Drinking Water Standards with which he/she has to comply.¹¹

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Glossary

AAA	Army Audit Agency
ACSIM	Assistant Chief of Staff for Installation Management
A/E	Architect/Engineer
AEC	Army Environmental Center
AF	Air Force
AFCESA	Air Force Civil Engineer Support Agency
AFFARS	Air Force Federal Acquisition Regulation Supplement
AF/ILE	Deputy Chief of Staff, Installations and Logistics, Office of the Civil Engineer
AGA	American Gas Association
ANG	Air National Guard
AR	Army Regulation
ASA	Assistant Secretary of the Army
ASA (FM&C)	Assistant Secretary of the Army (Financial Management and Comptroller)
ASA (I&E)	Assistant Secretary of the Army (Installations and Environment)
BCE	Base Civil Engineer
BIC	Business Initiatives Council
BMAR	Backlog of Maintenance and Repair
BRAC	Base Realignment and Closure
CAA	Center for Army Analysis
CAS	Cost Accounting Standards
CBD	Commerce Business Daily
CEA	Certified Economic Analysis
CEHNC	Corps of Engineers, Huntsville Engineering and Support Center
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CERFA	Community Environmental Response and Facilitation Act
CFC	Chlorofluorocarbons
CFR	Code of Federal Regulations
CIAC	Contribution In Aid of Construction
CLIN	Contract Line Item

CO	Contracting Officer (air Force)
COE	Corps of Engineers
CONUS	Continental United States
CPO	Civilian Personnel Office
CX	Categorical Exclusion or Center of Expertise
DA	Department of the Army
DASA (I&H)	Deputy Assistant Secretary of the Army (Installations and Housing)
DESC	Defense Energy Support Center
DLA	Defense Logistics Agency
DOC	Directorate of Contracting
DoD	Department of Defense
DODI	Department of Defense Instruction
DOE	Department of Energy
DON	Department of the Navy
DPW	Directorate of Public Works
DRI	Defense Reform Initiative
DRID	Defense Reform Initiative Directive
DRM	Directorate of Resource Management
DUERS	Defense Utilities and Energy Reporting System
DUSD (I&E)	Deputy Under Secretary of Defense, Installations and Environment
EA	Economic Analysis or Environmental Assessment
EBS	Environmental Baseline Survey
ECOP	Environmental Condition of Property
ECP	Engineering Change Proposal
EEI	Edison Electric Institute
EIAP	Environmental Impact Assessment Package
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FAR	Federal Acquisition Regulation
FM	Financial Management
FMV	Fair Market Value
FNSI	Finding of No Significant Impact

FOA	Field Operating Agency
FORSCOM	Forces Command
FOSL	Finding of Suitability to Lease
FOST	Finding of Suitability to Transfer
FPA	Federal Power Administration
FY	Fiscal Year
GA	Georgia
GAO	General Accounting Office
GCE	Government Cost Estimate
GSA	General Services Administration
HAZMAT	Hazardous Material
HESC	Huntsville Engineering and Support Center
HQ	Headquarters
HQDA	Headquarters, Department of the Army
HQUSACE	Headquarters, U.S. Army Corps of Engineers
IAW	In Accordance With
ID	Identification
IGE	Independent Government Estimate
IPT	Integrated Process Team
IRS	Internal Revenue Service
ISR	Installation Status Report
JAG	Judge Advocate General
KO	Contracting Officer
LBP	Lead Based Paint
LCCA	Life Cycle Cost Analysis
LRA	Local Reuse Agency
M	Million
MACOM	Major Command
MAJCOM	Major Command (Air Force)
MCA	Military Construction, Army
MILCON	Military Construction
MOU	Memorandum of Understanding
M & R	Maintenance and Repair

MS	Microsoft, Inc.
NDEPS	National Pollutant Discharge Elimination System
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOI	Notice of Intent
NTSB	National Transportation Safety Board
O&M	Operations and Maintenance
OACSIM	Office of the Assistant Chief of Staff for Installations Management
OASAALT	Office of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology
OCONUS	Outside of the Continental United States
ODS	Ozone Depleting Substances
OGC	Office of General Council
OMA	Operations and Maintenance, Army
OMB	Office of Management and Budget
OSD	Office of the Secretary of Defense
OTJAG	Office of the Judge Advocate General
PARC	Principal Assistant Responsible for Contracting
PCB	Polychlorinated Biphenyl
PDASA (I&E)	Principal Deputy Assistant Secretary of the Army (Installations and Environment)
PL	Public Law
POC	Point of Contact
PoD	Point of Demarcation
POM	Program Objective Memorandum
PM	Program or Project Manager
PTS	Privatization Tracking System
PUC	Public Utility Commission
Q and A	Question and Answer
QASP	Quality Assurance Surveillance Plan
RCI	Residential Communities Initiative
REC	Record of Environmental Consideration
RFP	Request for Proposal

ROD	Record of Decision
ROE	Report of Excess
RPMA	Real Property Maintenance Activities
SAALT	Secretary of the Army for Acquisition, Logistics and Technology
SOW	Scope of Work
SS	Source Selection
SSA	Source Selection Authority
SSEB	Source Selection Evaluation Board
SSET	Source Selection Evaluation Team
TDY	Temporary Duty
TIM	Transformed Installation Management
USACE	U.S. Army Corps of Engineers
USAF	United States Air Force
USC	United States Code
UP	Utilities Privatization or Utility Provider
UPEAST	Utilities Privatization Economic Analysis Support Tool
UXO	Unexploded Ordnance
VA	Virginia

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Appendix A



Navy's Utilities Privatization Process

What is the Navy's utilities privatization process?

Pre-Proposal Phase

- Solicitations advertised minimum of 6 months

- Issue System Technical Data Packages (levels playing field for Offerors)

- Conduct pre-proposal site visits

Best Value Selection

Process Steps

- Evaluation of Proposals

- Competitive Range Selection

- Discussions with Competitive Range

- FMV Appraisals

- Best Value Selection

Timeframe

- Approximately 12 to 13 months

- Evaluations & discussion are complex due to open-ended

RFP

- Multiple rounds of Discussions

- Area-Wide RFPs result in large No. Of Proposals

- Multiple Installations involved in process

Negotiations

Process Steps

- Offeror performs due diligence

- Offeror performs detailed system investigation (may revise price)

- DoN performs:

- Environmental Baseline Survey

- NEPA

- DoN establishes site-specific requirements

- Negotiate Contract, Conveyance, & Access language

Timeframe

- Approximately 9 to 11 months

- Negotiations complex (no pre-established contract language)

Due diligence & EBS not performed up-front
 Address security requirements
 Approval from PUC or governing boards for Co-Ops/Munis

Timelines for Area-Wide RFPs

Dependent on:

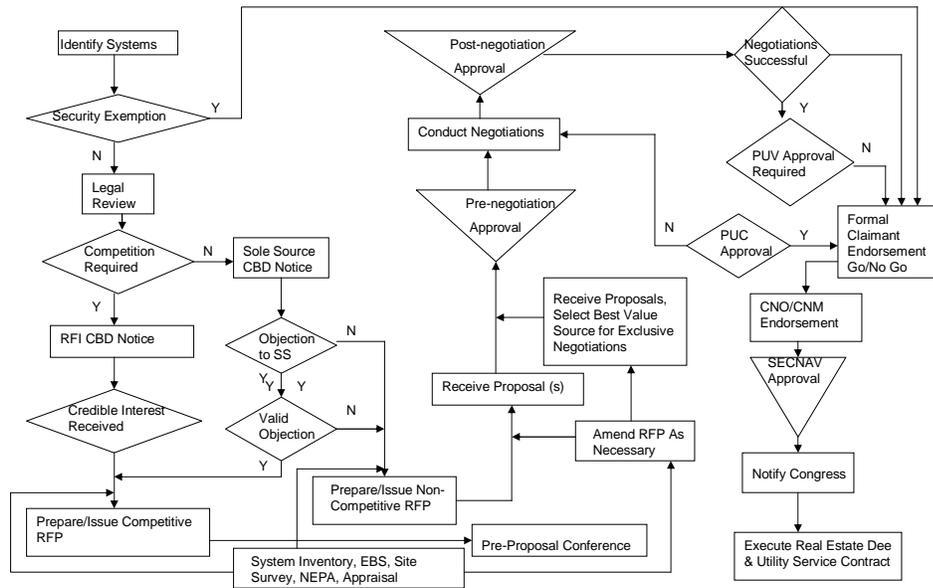
- Number of Systems
- Number of Proposals received

Typical RFP Area includes:

- 5 to 10 DoN Installations
- 30 to 65 Utility Systems
- Multiple States

Total timeline is approximately 2-years

NAVY’S UTILITIES PRIVATIZATION PROCESS



Appendix B



Air Force's Utilities Privatization Process and Team

What is the Air Force's utilities privatization process?

The Air Force uses a preliminary screening step followed by a three-phase execution process for viable candidate systems. Preliminary screening is performed for all programmed utility systems to determine which systems are exempt from privatization for readiness or unique security reasons. The Secretary of the Air Force has final approval authority for exempting systems. Viable utility system candidates follow the phases listed below:

- (1) Project plan and feasibility analysis – establish privatization team, draft the project plan, conduct regulatory review, perform utilities requirements assessment, perform market analysis, perform operational impact analysis, develop preliminary EA, publish Go/No-Go decision letter.
- (2) Initiate and complete EIAP, draft real estate documentation, draft employee, operational, and post-award transition plans, develop a source selection plan and acquisition plan, establish evaluation criteria, draft RFP, SSA decides to finalize and issue the RFP.
- (3) Finalize and issue RFP, evaluate proposals, prepare a certified EA, finalize transition plans, finalize real estate instruments, finalize Comprehensive Analysis Report, submit approval package to Secretary of the Air Force, Installations, Congress approves, award contract, sign real property transfer documents, and implement the transition plans.²¹

Who is on the Air Force's utilities privatization team?

Installation/Wing Commanders, Major Commands (MAJCOMs), Deputy Chief of Staff for Installations and Logistics (HQ USAF/IL), Deputy Chief of Staff for Installations and Logistics, Civil Engineering Directorate (HQ USAF/ILE), Air Force Civil Engineer Support Agency (HQ AFCSA), and Utilities Privatization Integrated Process Team (IPT)

The IPT includes Privatization (AF/ILEI), Engineering (AF/ILEC), Environmental (AF/ILEV), Operations and Maintenance (AF/ILEO), Readiness and Work Force Management (AF/ILEX), Programs (AF/ILEP), Directorate of Manpower and Organization (AF/XPMS), Air Force Civil Engineer Support Agency (AFCESA), Air Force Center for Environmental Excellence *AFCEE), Air Force Real Estate Agency (AFREA/DR), Budget and Cost (SAF/FMBO & SAF/FMCE), Acquisition (SAF/AQCO), Installations (SAF/MII), and Legal (SAF/GCN and AFLSAS).²¹

Appendix C



Air Force Utilities Privatization Lesson Learned

Title and Number: *Pre-Proposal Conference Preparation – AFCESA00001*

Lesson: 1) Set up a process to answer the questions such as Contracting Officer (CO) sending questions to the project team for response, have legal review questions and answers, provide draft responses to all parties, set up meeting (teleconference, conference call, face-to-face meeting) to discuss and finalize answers, and then have the CO issue an amendment if required. 2) All questions do not have to be answered – the question can be referred to the specific paragraph of the RFP that answers the question or to the previous amendment if the same question is asked again. 3) Ensure an appropriate room is reserved and that functional experts are available. 4) Have transportation ready for the contractors. 5) Review the RFP and know what is in it. 6) Do a dry run of the base tour ahead of time. 7) Set up a technical library early (spell out arrangements for viewing information, what medium the information will be on, and costs for copying). 8) Start the conference on time. 9) Expect additional site visits.



Title and Number: *Technical Library Preparation – AFCESA00002*

Lesson: Technical library should have at least the following information available: 1) System maps; 2) Work order/Job order reports; 3) Plans (Comprehensive/General Plan, Disaster/Contingency response, HAZMAT/Spill); 4) Outage reports/Facilities Priority List; 5) Historical information (billing statements, special events, etc.); 6) Digging permit process; 7) Generator/Transformer list; 8) Studies related to utility systems (except UP studies); 9) Environmental information (PCB reports/EIAP/EBS); 10) List of recently completed projects; 11) List of required capital upgrades for each utility system.

Title and Number: *Abandonment as an Alternative – AFCESA00004*

Lesson: For utility systems that are ready for replacement and the current utility provider will install the new system, the existing system should be abandoned in place and removed from the real property records. This is especially useful for utility systems that are partially owned by the government and partially owned by the utility provider.

Title and Number: *Ownership of Utilities – Preliminary UP Screening Process – AFCESA00005*

Lesson: Early in the UP process establish with real property records personnel exactly who owns the utilities before proceeding.

Title and Number: *Source Selection Evaluation Board (SSEB) Training – AFCESA00006*

Lesson: Need to ensure the CO effectively plans for and trains the SSEB members well before proposals are received.

Title and Number: *Points of Demarcation (PoD) – AFCESA00011*

Lesson: Identify all unique PoDs for the system and supporting utilities. Supporting utilities need to have their PoDs clearly defined for all systems that will be transferred.

Title and Number: *Including UP with MILCON Projects – AFCESA00012*

Lesson: Do not include UP efforts as part of MILCON projects. AF decided to include the privatization of the wastewater system at one of their bases as a contract line item (CLIN) option in a MILCON project to construct a new wastewater line to an off-base treatment plant. Bids far exceeded the Government's estimate and the option was determined to be uneconomical. Considerable problems were encountered when combining a services contract and a construction contract in terms of specifications, payments, and other issues.

Title and Number: *AFCESA PMs as Technical Evaluators – AFCESA00013*

Lesson: Appoint the PMs as technical advisors to the technical evaluation teams. This way, the PMs can be proactive in guiding the team and also work closely with the economic analysis process. As a technical evaluator, the PMs cannot have access to the cost/price and economic data.

Title and Number: *Minimizing Pictures/Graphics in Proposals – AFCESA00014*

Lesson: In future RFPs, include in L.4, Proposal Preparation Instructions – General, an instruction limiting pictures in the electronic proposal to the cover page only and limiting graphics to only those conveying data integral to the proposal. Some of the previous proposals received have been too large to open or download (system times out).

Title and Number: *Requirement to Submit UP Funding for Award – AFCESA00016*

Lesson: Policy and guidance clarification is required in order to ensure the MAJCOMs understand that funding requests for UP awards need to go through the normal budgeting process, including unfunded requirements (i.e., POM Disconnects).

Title and Number: *Government Cost Estimate (GCE) Development – AFCESA00017*

Lesson: In developing the GCE, ensure the Contracting Officer (CO) in addition to the base civil engineering and financial management folks are educated on the process and final numbers. Include the CO in any meetings with the A-E and base personnel associated with the GCE. This will enable the CO to field general questions from offerors.

Title and Number: *Price Proposal Clarification – AFCESA00019*

Lesson: Clarify the language in the RFP to let the offerors know what the anticipated year of privatization will be for that specific project so they can prepare their price volume accordingly.

Title and Number: *Alternate Proposals – AFCESA00022*

Lesson: Technical team needs to re-evaluate the acceptance of alternate proposals. Possibility exists that two bid schedules could be included in the RFP (e.g., one for regulated bidders and one for tariff bidders. Currently bidders are allowed to submit alternate proposals that change any requirement of the RFP. This makes it impossible to do a cost evaluation.

Title and Number: *Handling Initial Capital Upgrades in the GCE – AFCESA00023*

Lesson: The Technical Review team needs to validate all initial capital upgrades. All validated initial capital upgrades are then added to section J of the RFP and provided to each offeror for inclusion in his/her estimate. All validated initial capital upgrades are added to the GCE. Any invalidated capital upgrades proposed are just included on the privatized side for that offeror.



Title and Number: *Inclusion of All Funding Sources – AFCESA00027*

Lesson: When privatizing a system it is important to understand which funding source(s) will be used. Ensure that the appropriate fund source pays its share.

Title and Number: *Extended Time for Source Selection Team Reviews – AFCESA00028*

Lesson: Contracting Officer (CO) must set strict guidelines for managing the Technical Team members time and demand that schedules be met. Technical Team members must ensure that the comments they have entered into the Electronic SS system specifically address each exact point related to in the proposal. This will help shorten the time required for consensus and cost realism meetings. Schedules for proposal review that are using remote location Electronic SS system should include at least a month for each two proposals received.

Title and Number: *Keeping Base Civil Engineer (BCE) Involved in Certified Economic Model – AFCESA00029*

Lesson: Provide the base/MAJCOM FM and the BCE a copy of the draft certified economic analysis (CEA) with real status quo and dummy bidder raw data for their review early on. This can be done anytime during the Source Selection (SS) process. This will familiarize him/her with the documents and serve to pre-certify the status quo data.

Title and Number: *Keep Financial Management (FM) Community Informed Throughout UP Process – AFCESA00030*

Lesson: Base and MAJCOM FM community continued involvement is necessary to fully understand the economics of the Government cost and bidder costs and model structure. Recommend FM representative from either/both MAJCOM/base serve on the SS Pricing Team.

Title and Number: *Due Diligence Visits – AFCESA00031*

Lesson: If MAJCOM wants to perform and fund due diligence visits to the references that the offerors have provided, these visits should be conducted following negotiations with the offerors and during the period when the offerors are preparing their revised proposals. The CO should work with the MAJCOM to identify personnel to conduct and schedule the visits. Results of the visits will then be made available to the Past Performance Team to complement their recommendations.

Title and Number: *Sufficient Base Access for the Offerors – AFCESA00032*

Lesson: MAJCOM provide guidance to the base and ensure that the offerors are allowed access to those utility systems for which they are planning and revising proposals. The CO must ensure that the offerors have access to the base and the utilities of concern.

Title and Number: *RFP Complexity – AFCESA00035*

Lesson: A municipality may submit a very short, incomplete proposal although it has a reputation for providing high quality utilities services. This may happen for two reasons. 1) The offeror has the resources to respond properly to the RFP but doesn't believe that their effort is warranted based on the relatively small potential return from the small installation. 2) The offeror doesn't have the staff or time to dedicate to the proposal preparation required by the RFP. Need to develop a streamlined RFP for small installations.

Title and Number: *Plan Responsibility for Unknowns – AFCESA00039*

Lesson: Funds for unknowns (e.g., modifications/amendments made by Policy and Guidance, Economic Analysis, RFP, etc) should be strategically planned up-front and early on to assist in fixing new "vectors".

Title and Number: *Use of Source Selection (SS) Tools – AFCESA00040*

Lesson: Contracting Officers need to approve use of the SS Tool; schedule and ensure completion of training for all participants on the team, to include leadership; and obtain and have in place all computer access/authorizations/equipment prior to receipt of offers.

Title and Number: *Offer Acceptance Period – AFCESA00041*

Lesson: Project Managers should include the Offer Acceptance Period end date on their list of critical milestones and ensure that Contracting Officers notify potentially affected offerors far enough in advance to allow those offerors to extend the original date if required.

Title and Number: *Due Diligence Team Members – AFCESA00044*

Lesson: Members of the technical team and the program manager should accomplish these due diligence visits along with the CO, because they are knowledgeable of the offerors' technical proposals. Also all organizations with a vested interest are represented by members of the SSET who have the appropriate level of expertise required to accomplish the due diligence visits.

Title and Number: *Approval Process for Transferring Property Using the GSA Area-Wide – AFCESA00045*

Lesson: 10 USC 2688 sets the policy for utility system conveyance. It requires congressional approval. Although the GSA Area-wide vehicle provides a quicker and shorter process to select the contractor, congressional approval is still required when Government property is being transferred. Allow enough time in the schedule to obtain congressional approval.

Title and Number: *RFP Solicitation Closing Date Extensions – AFCESA00046*

Lesson: When proposals were due within 90 days the offerors needed more time to complete their proposals, eventually requiring 240 days. As a result, use 120 days for the solicitation period.

Title and Number: *Tracking Offerors' Bid Expiration Date – AFCESA00047*

Lesson: Overlooking or allowing the offerors bid to expire will cause the process to be null and void and the procurement process has to begin again. The project manager should track each offeror's bid expiration date to assure timely response.

Title and Number: *Additional Site Visits to the Base – AFCESA00048*

Lesson: The Air Force should allow time in the project schedule for a second site visit for the proposers to see the utility systems with an accompanying two-week re-submittal time with each visit. For first-time proposers contracting with the Government, additional time may be necessary to help them understand the inventory data given to them. The CO should ensure the option for a second site visit is presented during the negotiation conference with the proposers.

Title and Number: *Due Diligence Questions – AFCESA00049*

Lesson: During due diligence visits, conducted after the evaluations, the CO needs to be prepared to ask the following questions, as a minimum, and see the data needed to adequately address the Air Force's concerns.

In the proposal, the offeror discusses three service centers. The Government would like to conduct a walk through of one of the service centers and observe an actual call being received.

The proposal discusses a survey feedback card that customers complete to express their opinions of service. The Government would like a sample of the survey feedback card.

The Government would like to conduct a walk through of an equipment yard to view general conditions of vehicles (bucket, pick-up, pump trucks, etc.)

The Government would like to conduct a walk through of the treatment plants mentioned in the proposal.

The Government would like to walk through the inventory warehouse.

The Government would like to discuss how recapitalization projects are handled. What procedures will be implemented or followed in order to determine when system components need to be replaced.

How long are service records retained? Is the process manual or automated?

Is it possible to meet a few of the actual service personnel who will be involved in the operation and maintenance of the system as identified within the proposal?

The Government would like to obtain and review a copy of the offeror's Annual Report.

The Government would like to obtain and review some of your outage information records for outages occurring within the last six years.

The Government would like to discuss with you some examples of how your value system has guided your everyday business activities.

Title and Number: *Program Milestone Review – AFCESA00051*

Lesson: At the point of conducting the due diligence visits, the SSA should review the program and consider conducting a meeting with all participants, with Air Staff presence, to verify milestones, expectations, tasks, and keeping the program on track.

Title and Number: *Contact of UP POCs – AFCESA00052*

Lesson: MAJCOM and PMs should make frequent contact with the base POCs and provide UP program status information.

Title and Number: *Electrical Transformers in Buildings as Deficiencies – AFCESA00054*

Lesson: Air Force will identify all electrical transformers in buildings that violate law, regulation, code provision or ordinance and include the list as an attachment to section J of the RFP. The Government and the offerors will treat these transformers as deficiencies and the offerors will be given an opportunity to revise proposals.

Title and Number: *Differing Sites Conditions Clause – AFCESA00055*

Lesson: Ensure this clause is included in the RFP since the UP contracts may require a good deal of construction work.

Title and Number: *Protection and Preservation of Historic Resources/Sites/Buildings – AFCESA00056*

Lesson: Verify that the appropriate entries to Section J of the RFP require that the contractor preserve all national historic sites/buildings/locations/grounds/etc. as identified by the Government. Also the contractor must get written approval from the CO to perform any maintenance or changes to the historic resources.

Title and Number: *Contractors as Source Selection Advisors for AF UP – AFCESA00057*

Lesson: Verify that the RFP provides in the solicitation who (company) the Government plans to use as advisors. Add a clause to Section L entitled "Use of Non-Government Advisors". The clause should read something like this: " This clauses advises offerors that data submitted to the Government in response to this solicitation may be released to non-government advisors for review and analysis. These advisors may be required to provide advice within their area of expertise regarding proposal strengths, weaknesses, inadequacies, risks, and deficiencies.

Non-government advisors will be subject to civil and criminal penalties associated with any release of information pursuant to FAR Part 3.104 procurement integrity violations. They will not determine ratings of Offerors' proposals. If the offeror has any objections to non-government advisors access to their proposal, the Offeror shall provide grounds and justification for their objections. The non-government advisors are: _____.”

Title and Number: *AFCESA Utilities Privatization Website Lessons Learned Database – AFCESA00069*

Lesson: Remove the AFCESA UP Lessons Learned Database from the Air Force restricted site and allow users to enter lessons without having to download the database.

Title and Number: *Remove USAF UP Competitive RFP Template from the Restricted Site – AFCESA00070*

Lesson: Remove the AF UP RFP Template from the .mil restricted AFCESA website and place it on the public AFCESA website for anyone to access.

Title and Number: *Primary Organization Responsible for UP Schedules between AFCESA and DESC – AFCESA00071*

Lesson: Obtain agreement among all parties on the one organization who will be the lead for UP project schedules and reporting to higher HQ. DESC Contracting Officer must work and/or electronic mail directly with the AFCESA PM any and all schedule changes in advance of release to higher HQ.

Title and Number: *Price Proposal – Sub-CLIN AB: Fixed Monthly Cost to Operate and Maintain the Utility System – AFCESA00074*

Lesson: Clarify for the offerors the proper procedure on how to submit the Fixed Monthly Utility Charge the new provider must charge the Government. Include all costs (operations, maintenance, general and administrative, renewals and replacements, capital upgrades, and the recoverable portion of the purchase price) associated with the requirements of the contract.

Title and Number: *Special Contract Provisions – Catastrophic Loss – AFCESA00079*

Lesson: Ensure that the contractor has to provide how it plans to protect itself from a catastrophic loss (e.g., earthquake) and/or personal injury due to negligence.

Title and Number: *AFFARS Clauses Incorporated by Reference – AFCESA00082*

Lesson: Ensure that the RFP has incorporated the standard clause about Ozone Depleting Substances (ODS) especially when a base is privatizing a cooling plant and turning over all ODS material.

Title and Number: *List of Attachment – Right-of-Way – AFCESA00095, 96, 97, and 98*

Lesson: Provide 26-foot wide right-of-way (extending 13feet on each side of the utility) for electrical and natural gas distribution systems. Provide 26-foot wide right-of-way (extending 13feet on each side of the utility) for water and wastewater distribution pipe sizes of 24 inches or less and a 50-foot wide right-of-way extending 25 feet of each side of the utility for pipe sizes greater than 24 inches.

Title and Number: *Data Collection and Documentation – ANG00001 and 10*

Lesson: Need to use a combination of AutoCAD drawings, real property reports and records, DUERS, lease documents, base master plans, word of mouth, and hands on inventory to determine the most accurate picture of the base utility systems.

Title and Number: *Helping Bases Become More “Pro” Privatization – ANG00002*

Lesson: Ease two of the BCE’s major concerns – funding of UP and responsiveness of selected contractors – by advising the BCEs up front that costs associated with the privatization study including TDY, training, and the contract itself (once awarded) will be borne by the MAJCOM. Additionally provide the BCEs with the appropriate names and phone numbers of BCEs and other POCs at bases where utility systems have been privatized so they can determine for themselves how well privatization actually works.

Title and Number: *ANG Lease Considerations – ANG00007*

Lesson: Each ANG installation is unique and each lease must be individually and thoroughly analyzed for privatization potential. Some leases say the facilities, systems, and improvements are not AF owned property. Some leases include clauses covering utility system ownership and/or operations and maintenance. Some leases even specifically preclude ownership transfers or establish exclusive rights or rights of approval.

Title and Number: *Direct Negotiation with Current Owners/Providers – ANG00008*

Lesson: Direct solicitation of current providers and/or landowners may result in more successful privatization efforts. Many times current provider and/or land owners choose not to compete because of complex contracting procedures which cost considerable time and money. If direct negotiations were possible, more privatization may result.

Appendix D



Persons Contacted

Persons Contacted

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