

DEPARTMENT OF THE ARMY
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT

POLICIES AND PROCEDURES FOR PRIVATIZATION
OF ARMY OWNED UTILITY SYSTEMS
AT ACTIVE INSTALLATIONS

1. PURPOSE: This updates the Army policy (Reference 2.a. through 2.d.) for privatization of installation utility services at active installations; defines the roles of the ASA(IL&E); Headquarters, Department of the Army; the U.S. Army Corps of Engineers (USACE); the Major Commands (MACOMs); and the Installations; and directs the formulation of plans, schedule and milestones for implementing this policy. This policy does not apply to utility systems at installations closing under BRAC.

2. REFERENCES:

- a. Chief of Staff, Army Memorandum, Privatization of Army-Owned Utility Systems, 1 May 1997
- b. HQDA, ACSIM (DAIM-FDF-U) Memorandum, Subject: Privatization of Natural Gas Service and Abandonment of Existing Systems, 29 April, 1997
- c. AR 420-49, Facilities Engineering, Utility Services, 28 April, 1997
- d. HQDA, OACSIM (DAIM-FDF-U) Memorandum, Privatization of Army Owned Utility Systems, 17 March 1995
- e. HQUSACE, CERE-MM Memorandum, Revised Guidance - Privatization/Disposal of Utility Systems at Active Military Installations, 10 October 1997
- f. Office of Management and Budget Circular No. A-76, Revised Supplemental Handbook, Performance of Commercial Activities, March 1996
- g. AR 11-18, The Cost and Economic Analysis Program, 31 January 1995

3. OVERVIEW:

a. Army Utilities Strategy: The Army Strategy to provide reliable, cost effective and efficient utility services to installation customers has three components: (1) Utilities Privatization; (2) Utilities Modernization, which focuses on centrally-funding the upgrade and renovation of utility systems that have a low prospect of being privatized; and (3) Improved Preventive Maintenance.

b. Utilities Privatization: Installation utilities systems and services shall: (1) support vital installation missions, (2) be reliable, (3) be resource efficient, and (4) leverage technology. The Army policy is to obtain utility services from the most efficient private/public sector providers. This may be accomplished through a transfer of the installation utility infrastructure to a private/public sector organization that takes over the responsibility to own, maintain, repair and eventually dispose and replace the utility systems to meet current and future requirements of the Army installations. The organization acquiring ownership of the distribution system may, or may not be, a separate entity from the supplier of the commodity, such as electricity, natural gas, treated potable water or wastewater treatment and disposal services. The Army has determined that privatization of utility systems is the most cost effective way of obtaining these services for the installations.

c. Army Privatization Goals: The Army goal is to:

Privatize 100 percent of electrical, water, wastewater, and natural gas systems by 1 January 2000, except those needed for unique security reasons or when privatization is uneconomical.

4. RESPONSIBILITIES:

a. Office of the Assistant Secretary of the Army (Installations, Logistics and Environment) (ASAILE): provides program policy direction, coordinates Secretariat and Office of the Secretary of Defense approval for requests for legislation to transfer utility systems with underlying land, and approves requests to transfer utility systems without underlying land.

b. Office of the Assistant Chief of Staff for Installation Management (OACSIM): is the Army Staff proponent for the program. OACSIM develops and implements Army policy; coordinates with other ARSTAF elements and agencies to facilitate the process; ensures programming adjustments in the installation utility accounts for operations, maintenance, and repair due to privatization; reviews study results and provides guidance to MACOMs and USACPW for privatization actions at installations. OACSIM approves MACOM concurrence to categorize an installation utility system as being "Uneconomical to privatize" or "No potential to privatize." OACSIM reviews and makes recommendations on installation requests for approval to privatize utility systems within the authority of the Army, or initiates legislative proposals for those that require Congressional authority.

c. Major Commands (MACOMs): MACOMs will support initial feasibility studies at their installations and program resources to conduct all follow on actions that will lead to a transfer of the utility system to the private sector. MACOMs will develop an implementation plan and schedule of milestones for achieving the program goals by the target year. This implementation plan and schedule shall be sufficiently detailed to show each installation utility system, ownership status, potential/interested utility privatization partners, current phase of the privatization process, major short and long term steps and the responsible parties for completing the privatization plan. MACOMs will review all privatization studies conducted at their installations. If the study supports privatization and the installation is pursuing the initiative, the proposed timeline for completion of the action will be forwarded to OACSIM (DAIM-FDF-U). If the study supports privatization, but an installation determines not to pursue privatization, the MACOM will forward the installation's position and supporting rationale along with comments, concurrence or nonconcurrence to OACSIM. The MACOM will also review and endorse to OACSIM all installation determinations that a utility system is uneconomical to privatize or there is no potential to privatize.

d. Installations: Commanders should establish an installation level team of functional experts from resources, contracting, legal, engineering, public affairs, personnel and others as appropriate to privatize their utility systems. The installation will develop a plan within 60 days, to privatize their utility systems when a study indicates it to be cost effective, and in the best interest of the Army. This privatization plan will be forwarded to the MACOM point of contact. If an installation decides not to pursue privatization, then the decision and rationale will be provided the MACOM within 60 days of the completion of the life cycle cost analysis. This includes studies that do not support privatization for economic reasons.

e. U.S. Army Corps of Engineers (USACE)

(1) Headquarters: is responsible for overall real estate/real property policies and uniform procedures for: (a) determining fair market value of utility systems for privatization, and (b) transferring utility systems, both with and without underlying lands, from Army control to a municipal, private, regional, district or cooperative utility company. Headquarters, USACE will ensure that these policies and procedures (See Reference 2e.) are issued and uniformly used by the Corps Districts.

(2) U.S. Army Center for Public Works (USACPW): CPW provides technical support to MACOMs and installations. The support is in conducting privatization feasibility studies, utilities contracting and legal counsel. CPW issues standardized guidance, procedures, and instructions for use by installations, subject to approval by OACSIM. CPW also reviews alternative procedures and new ideas submitted by a MACOM or installation for potential application across the Army.

5. PROCEDURES:

a. Determination of Initial Requirement: All installation exterior utility systems (electrical, natural gas, domestic water, and sanitary wastewater) will be considered potential privatization candidates, unless:

(1) A study including the issuance and processing of a request for proposal (RFP) has been performed and evaluation of the resulting proposals concluded that privatization would not be in the best interest of the Army, or

(2) A completed study including receipt of non-binding proposals has been followed by the issuance and processing of an RFP, and evaluation of the resulting proposals concluded that privatization is not in the best interest of the Army, or

(3) There are documented reasons to support a conclusion that privatization is not in the best interest of the Army, or

(4) There are no interested prospective owners for the utility system under consideration, as determined through a Determination of Interest/Market Survey (paragraph 5.b.) which includes, but is not limited to, canvass of local public utilities and private utility companies, and advertisement in the Commerce Business Daily, and

(5) The determination has been endorsed by the MACOM and approved by HQDA.

b. Determination of Interest/Market Survey: In coordination with the Director of Contracting (DOC), installations will contact local utilities to solicit expressions of interest in the privatization of the exterior utility systems. Informal determinations may be made, prior to initiating a privatization study, or formal market surveys may be made to a larger audience, such as through the Commerce Business Daily. Unless otherwise restricted by federal or state law, utility regulations or public utility commission rulings, solicitations to privatize should be based on full and open competition. If solicitations are to be limited to a specific type of companies or entities, such as regulated utilities, municipal utilities, and/or Rural Electric cooperatives, a Determination and Finding (D&F) must be prepared and provided to the DOC, along with the RFP. If solicitations are to be limited to a specific company or entity, a Justification and Authorization (J&A) for a sole source procurement must be prepared and provided to the DOC, along with the RFP for processing. Standardized RFPs for solicitation of utilities privatization contracts as prepared or approved by the Utilities Contracting Office, CPW may also be issued by the DOC as part of the privatization study, and the results incorporated into the study conclusions and recommendations.

c. Privatization Study: An evaluation of the economic and functional feasibility of privatizing an installation exterior utility system shall be performed and will include:

(1) An inventory and assessment of the existing utility system infrastructure except for natural gas systems. Assessment of natural gas systems will be made in accordance with reference 2.b.

(2) A determination of the required repairs, improvements, and upgrades to meet current and foreseeable utility industry and environmental standards. And an estimate of the 25-year total life cycle cost of the "Status Quo" - continued ownership and operation by the Army.

(3) Solicitation of proposals from all known utility providers and/or providers developed from market surveys.

(4) An evaluation and comparison of the "Status Quo" with the various alternatives submitted by potential utility providers to determine the best value for the Army.

These studies may be conducted using in-house installation assets of comparable experience, technical expertise, and professional standing, or through contracts with CPW. Installations will adhere to the privatization methodologies and procedures instituted and approved by OACSIM, such as scopes of work for RFPs and methods for evaluation of costs, overhead, and "fair market value" of the utility system to be privatized.

d. Requests for Proposals: Within 60 days of the receipt of a final report which concludes that privatizing a utility system is feasible and provides economic benefit to the Army, the installation commander should:

(1) Take all appropriate actions to privatize the utility system, if the privatization study, based on a non-binding concept proposal, was followed by issuance and processing of an RFP, or

(2) Initiate formal negotiations for the transfer of the utility system and procurement of utility service, if an RFP was issued as part of the privatization study process. Ensure that the proposal is still valid or request that it be extended.

e. Real Estate Actions: All real estate actions relating to the privatization of a utility system on active installations taken by the installation commander, the supporting Corps of Engineers District, or others shall be in accordance with Reference 1.e. This includes:

(1) All documents to describe and convey utility plant, equipment, and distribution/collection systems, or to grant utility easements;

(2) All environmental documentation as required by NEPA; and

(3) Utility system valuations.

f. Approval of Status: Installation decisions to categorize a utility system as being "Uneconomical to privatize" or having "No potential to privatize" shall be submitted through the MACOM for comment, concurrence or nonconcurrence to OACSIM for approval.

6. SPECIAL ISSUES:

a. Exclusion from A-76 Requirements: Privatization is an Army installation management decision to exit the utility business by divesting the utility assets and obtaining the services from a utility provider. Because of this divestiture and change in control, an installation utility privatization action is not covered by A-76, Commercial Activities, requirements. As part of the decision process to privatize an installation utility system(s), the installation shall perform an economic analysis and make a life-cycle cost comparison of at least two options: privatization and continued Army ownership. Economic analyses shall be performed in accordance with Reference 2.g.

b. Military Construction and Major Repair Projects for Exterior Utility Systems: All new construction or major repair projects for exterior utility systems will fully evaluate privatization during the project planning phase as the primary alternative, in accordance with AR 415-15. The results of the evaluation, demonstrating that privatization has been determined to be uneconomical or unfeasible, shall be submitted with the project documentation. Maintenance and repair projects will not be processed without privatization study documentation. DD Form 1391 will be certified by the Installation Commander. Projects approved at the HQDA Project Review Board for a program year more than 3 years out will be re-evaluated for privatization opportunities during the concept design phase to ensure that full consideration is given to privatization before committing funds.

c. Personnel Issues: Federal employees, who will be adversely affected by any privatization actions taken under this policy, shall be afforded full consideration as provided for by current Office of Personnel Management regulations for out-placing employees whose functions have been eliminated as a management decision. Installation commanders will exert maximum efforts to obtain a "Right-of-First-Refusal" for jobs for which the affected employees are qualified in any RFP or negotiated contract with the new utility provider.

7. CHANGES: Suggestions or comments should be submitted to Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, 600 Army Pentagon, ATTN: DAIM-FDF-U, Washington, DC 20301-0600.