

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

CERE-MM (405-80, 405-90)
OCT 1997

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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Guidance - Privatization/Disposal of Utility Systems at Active Military Installations

1. PURPOSE

Cost effective and reliable utility service is vital to supporting ongoing Army missions at active Army installations. This guidance provides faster and simpler methods of transferring ownership of utility systems from the Army. It is in the best interest of the Army to transfer utility systems as quickly as is feasible. This guidance addresses real estate issues for the transfer of utility systems and is not intended to revise or supersede existing policies and procedures involving power procurement in the privatization process. Utility systems are treated as real property and not personal property. The guidance applies to treatment plants and distribution systems of water, wastewater, natural gas, electric, steam generation heating and telephone systems categorized as real property.

2. APPLICATION

The following will normally be used when an installation requires a utility service contract for continuation of utility service. Such procedure will normally apply to non-BRAC installations and may apply to realigned BRAC installations (Public Law 100-526, as amended, or P.L. 101-510, as amended). It should be noted that the property is not considered excess, unutilized or underutilized and therefore should not require screening with the Department of Housing and Urban Development pursuant to the McKinney Act. When continuing utility service is required for active installations or for realigned installations, the installation utility office may negotiate a favorable rate with the utility company to reflect that the improvements are being transferred as part of the "value in use" or economic value of the utility system the utility company will derive after privatization.

3. PROCEDURE

a. The Installation Director of Contracting (DOC) solicits proposals for utility service in accordance with utility service contracting procedures. It is understood that proposals are solicited even though utility service is located within a state regulated franchise area and only one provider may provide service. The Request for Proposals (RFP) should contain a statement indicating that the utility distribution system may be transferred to the successful offeror and an easement, allowing the successful offeror to construct, own, operate, maintain, repair, and replace the distribution system will also be granted. Sample language for the RFP is attached at Enclosure 1. Early coordination between the DOC, the Director of Public Works (DPW), the MACOM and Corps District representatives is imperative.

b. (1) Concurrently with a. above, the DPW prepares a DA Form 337 which annotates the utility system to be conveyed as described in the installation real property inventory and will also prepare the appropriate environmental documentation required for the conveyance. Valuation of the utility distribution system is discussed below.

(2) The installation forwards the completed DA Form 337 to the MACOM along with a request to issue an utility easement to the entity. No Report of Availability is required for easements in support of utility contracts servicing the installation. Such easements are granted without charge. Consideration for the easement is the operation and maintenance of the facilities for the benefit of the United States and the general public. The easement term may be perpetual or indefinite but should be no less than the term of the proposed utility contract. Additionally, the installation, in coordination with the District, shall develop a description of the easement to be attached as an Exhibit to the easement instrument. As-built construction drawings, plat maps, etc. of the utility system may be used in lieu of an actual metes and bounds survey as

the legal description for the easement. Should the utility company require a metes and bounds description, the cost of such description shall be borne by the utility company.

(3) The MACOM approves the DA Form 337 and the request to issue an utility easement and forwards the approved request to the District. The District prepares the easement in accordance with the format provided at Enclosure 2. The easement should be issued under the appropriate easement authority: 10 U.S.C. 2668 or 10 U.S.C. 2669 or the BRAC authority, P.L. 100-526, as amended, or P.L. 101-510, as amended, if applicable.

c. An easement issued under the authorities cited above may not include more land than is necessary for the easement; may be terminated by the Secretary for (1) failure to comply with the terms of the grant; (2) nonuse; or (3) abandonment. The foregoing easement termination conditions apply only during Government ownership of the underlying fee estate. We intend to use one document to convey title to the improvements and also grant an easement to the entity allowing the entity to own, operate, replace and maintain the utility system on the installation. Language conveying title to the improvements to the entity is incorporated into the instrument. However, should the entity request a separate bill of sale or deed for the improvements, the District may prepare the document on a case by case basis.

d. The DOC reviews proposals submitted by prospective service providers, negotiates with the offeror(s) and selects the entity which will provide the Government with the best offer for utility service. The District then executes the easement citing the selected offeror as the grantee.

4. VALUATION

a. Valuation of utility distribution systems encompass two elements: the land area and the improvements. Typically the Government has granted, without cost, to the utility company an easement for distributions systems. The assumption was that the easement was for the benefit of the Government. The improvements, pipes, wires, poles, transformers, etc., are carried on the installation's books as real property.

b. The value of a distribution system is in the real estate it serves. Current Federal valuation policy for streets, highways, roads and alleys is that the value is "reflected in the value of the adjoining lots." The Uniform Appraisal Standards for Federal Land Acquisitions (The Yellow Book) states that "in most instances, the subdivider dedicates the streets to public use free of charge because of resulting enhancement." Utility distribution systems (for subdivisions) are typically installed by a subdivider and given to the utility company or municipality. In instances where a utility company installs a distribution system, or distribution lines, the utility company imposes an assessment against the real estate to repay its costs. The assessment reduces the cost to the provider i.e., the utility company or municipality.

c. In light of the foregoing, we recommend that all utility distribution systems be found to contain a nominal value for the real property component of say \$1.00. The recommendation is based upon the premise that the Government's value is captured in the sale of the installation lands during disposal actions, and retained during continued use of the real estate in the case of privatization.

d. Please note that any potential value-in-use, economic value or present value of anticipated net cash flows/future income pertaining to continued use, must be handled separately, should not be considered part of the real property valuation, and may be taken as a credit to the utility bill by the installation and applied towards the negotiated reduced utility service rates. This may be thought of as a "business value" attributable to the delivery of the product or service, i.e., the generation of income.

5. FEE CONVEYANCE

In instances where the ownership of the underlying land (fee interest) as well as the improvements are to be conveyed to a utility company, such as water and wastewater treatment plants the following procedures should be used.

a. The location of the improvements within the installation boundaries must first be considered to determine the necessity to convey a fee interest in land versus granting an easement at non-BRAC installations. Should the improvements be located at the interior of the installation, granting an easement in accordance with the above described procedures is the recommended course of action. The conveyance of

a fee interest at non-BRAC installations without special legislation is discouraged due to the complexity of the process as described in paragraph b(1) below.

b. AR 405-90 provides guidance on the disposal of land and improvements. The installation will prepare a Report of Excess (ROE) in accordance with AR 405-90 and forward the ROE to the MACOM. The ROE will state that the property to be transferred is not excess to the needs of the Army. During preparation of the ROE, the installation should consult with the District to obtain an estimate of value for the property. If the value exceeds the Army's delegated disposal authority (\$15,000), a decision must be made as to whether special legislation authorizing direct conveyance to the entity should be pursued. [NOTE: At the time of this writing, DA is attempting to introduce generic legislation amending Title 10, United States Code, allowing military departments to convey utility distribution systems located at any installation and regardless of value directly to a utility company or other entity.]

(1) If no special legislation has been enacted the following occurs:

(a) The MACOM approves the ROE and forwards the ROE to the District.

(b) The District reports property to the General Services Administration (GSA) advising the GSA that the property is not excess and may be available to public entities as a public benefit conveyance. [NOTE: Close coordination between the GSA, the District and the installation is imperative.]

(c) The DOC negotiates a utility service contract with the utility provider subject to technical and legal approval by the Directorate of Army Power Procurement IAW AR 420-41.

(2) If special legislation is enacted the following occurs:

(a) The installation prepares an ROE in accordance with AR 405-90 and forwards the ROE to the MACOM.

(b) The MACOM approves the ROE and forwards to the District

(c) The District appraises property, if required under terms of legislation, and conveys property to the entity at the consideration specified in legislation. Should easements be required in support of the fee transfer of the treatment plant, the procedures described above should be followed.

(d) The DOC negotiates a utility service contract with the entity specified in legislation.

(3) For realigned BRAC installations, P.L. 100-526, as amended, or P.L. 101-510, as amended, will be cited as the conveyance authority.

6. COORDINATION

This guidance has been coordinated with Mr. Eng, DAIM-FDF-U, Mr. McCulla, CECPW-C, Mr. Birney, OASA(IL&E), Mr. McMullen, CERE-E and Mr. Paterson, CERE-C.

FOR THE COMMANDER:

/S/
Encl
Director of Real Estate

B. J. FRANKEL