



OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

AUG 05 2004

ACQUISITION
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT AND LOGISTICS)
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Exemption Certifications under the DoD Utilities Privatization Program

On October 9, 2002, the Deputy Secretary of Defense provided guidance for the Department of Defense Utilities Privatization Program. This memo provides clarification of the procedures for certifying the exemption of utility systems from privatization under the guidance.

Attachment 1 provides excerpts of the guidance for exemptions with a more clear description of the actions required prior to exempting a system due to a determination that the privatization is uneconomical.

Attachment 2 provides an outline of the information that should be provided as supporting documentation when submitting exemptions to USD(AT&L). This information will assist efforts to identify and address barriers to privatization.

Please refer to these attachments for all exemption certifications submitted after August 1, 2004. To assist efforts of the working group, where available, the supporting documentation material should also be provided for all exemptions submitted since October 1, 2003.

I appreciate your continued efforts to make the DoD Utilities Privatization Program a success. My point of contact remains Captain Rick Marrs at (703) 697-6193 or Richard.Marrs@osd.mil.

Raymond F. DuBois
Deputy Under Secretary of Defense
(Installations and Environment)

Attachments:
As stated



Utilities Privatization Guidance

Economic Exemption Certification Procedures

This enclosure addresses the Utilities Privatization Guidance promulgated by DEPSECDEF memo of October 9, 2002. During several meetings of the Utilities Privatization Working Group, the Service representatives expressed differing interpretations of the determinations required before an exemption may be certified. Excerpts from the guidance are provided in the text in italics (*with emphasis added*).

Per the guidance, a system may be certified as uneconomical only when

- (1) there is a demonstrated lack of market interest, or when
- (2) the costs to the Government exceed the benefits.

1.a Section III-B-1, "Lack of Market Interest (on page 5 of guidance)

*"The Defense Components shall issue RFPs for all systems with expressed market interest in response to an RFI. The Defense Components shall synopsise all RFPs in the GPE to advertise the government's intent to privatize a utility system and advertise or announce the request in at least two or more other forms of relevant print or electronic media. **If no responsible proposals are received, the local utility provider should be specifically requested to provide a proposal or feedback.** If there are still no qualified responses to the RFP, the system may be exempted as uneconomical. **Feedback on the lack of interest should be provided to the Utilities Privatization Working Group.**"*

1.b Clarification for Exemptions due to Lack of Market Interest:

(1) In the event that a Request for Information (RFI) or a Request for Proposals (RFP) results in no responsive proposals, the Service should approach at least the local utility provider and request specific feedback on the barriers to privatization. This effort should be pursued to the extent necessary to obtain specific, useful feedback. The barriers of UP should be identified and resolved, if practical. If this interaction has not occurred prior to the RFP closing, a sole source procurement action or re-solicitation may be necessary to complete the privatization evaluation required by guidance.

(2) Once the initial procurement action is completed and the Source Selection Authority (SSA) declares the competitive process is complete, an SSA decision has been made. However, additional efforts may be required to complete the privatization evaluation per this section of the guidance.

(3) Utility providers are often unfamiliar with the Federal Acquisition Regulations and government contracting procedures. Experience has shown that discussions with the local provider in a sole source procurement action will often generate interest, which may lead to an economic proposal. These efforts should provide sufficient information to justify a final recommendation to the Service Secretary to award or exempt. If this final recommendation to the Secretary concerned is not scheduled for completion prior to September 2005, a schedule for this milestone must be established and progress

updates provided in the quarterly status reports to the Deputy Under Secretary of Defense (Installations and Environment) [DUSD(I&E)].

2.a Section III-B-2, "Costs Exceed Benefits" (on page 6 of guidance)

*"The Secretary concerned may exempt a utility system from privatization when, after evaluating all responses to the RFP, the economic analysis fails to meet the requirements of 10 U.S.C. 2688(e). The Defense Components shall compare the costs and benefits to the Federal Government on offers received in response to the RFP and conduct the economic analysis in accordance with Section IV. B. **The potential offerors should be queried to determine if any significant barriers precluded government requirements from being met through privatization.** Feedback on barriers shall be considered in further efforts to privatize the utility system. **Pertinent feedback on the barriers should also be provided to the Utilities Privatization Working Group.** If the system is still determined to be uneconomical, the exemption justification shall include the feedback along with the economic analysis."*

2.b Clarification for Exemptions due to Costs exceeding Benefits:

- (1) The potential offerors include local utilities, even those that did not respond to the RFP.
- (2) As barriers are identified, the Services should evaluate the feasibility of taking reasonable action to resolve the barriers in the present solicitation or future solicitations. If reasonable actions may result in an economical proposal, those actions should be attempted prior to certifying an exemption.
- (3) These efforts should provide the Utilities Privatization Team sufficient information to make a final recommendation to the Service Secretary to award or exempt. If this final recommendation to the Secretary concerned is not scheduled for completion prior to September 2005, a completion schedule must be established and progress provided in the quarterly status reports to DUSD(I&E).
- (4) The feedback to the Utilities Privatization Working Group should include information on the RFIs, market survey, solicitation results, the perceived barriers, potential resolutions and actual resolutions. The feedback should be provided to the Working Group as soon as practical.

Economic Exemptions DoD Utilities Privatization Program

Economic Exemptions per OSD guidance

For each exemption submitted, the Service Secretary shall certify, with justification, the basis for the exemption to the USD (AT&L). The two types of economic exemptions are:

1. Lack of Market Interest
2. Uneconomical – Costs Exceed Benefits

Per the OSD guidance the Utilities Privatization Working Group should receive timely feedback on the circumstances and barriers creating a lack of market interest or lack of economical proposals. This feedback is essential to developing consistent and efficient resolutions and analyzing the effectiveness of the overall program. As a minimum, the justification accompanying an exemption certification should include the following information:

1. Lack of Market Interest

- a) Date RFIs issued and number of responses received
- b) List of at least two additional advertisements/announcements
- c) Results of RFI and/or other efforts to conduct a market survey
- d) Information gained from contact with local utility and the pertinent contact information to assist future efforts to identify and resolve barriers
- e) Specific feedback on lack of interest from local utility.

2. Uneconomical – Costs Exceed Benefits

- a) Date RFIs issued and number of responses received
- b) List of at least two additional advertisements/announcements
- c) Results of RFI and/or other efforts to conduct a market survey
- d) Date RFP issued
- e) Number of proposals received
- f) Economic analysis summary for each proposal and government should cost estimate
 - I. Length of analysis period
 - II. Net Present Value (NPV)
 - III. Fair Market Value (FMV) of the system
 - IV. Review of non-monetary and environmental considerations
- h) Results of sensitivity analysis testing and impact
- i) Risk considerations. Identify and discuss risks that significantly impacted the economic analysis
- j) Copy of economic analysis for the proposal deemed to have best value and the government should cost estimate.
- k) Feedback on barriers to privatization and potential resolutions for future efforts