Response to Industry Questions
April 18, 2006

New Guidance

The Guidance is silent on the status of Solicitations that were previously issued or are in the evaluation stage. What will happen to those?

> **Previously issued solicitations should remain valid and should not require change. The Military Departments will need to review current evaluations and ensure compliance with the new guidance. Our intent in dealing with the new legislation was to minimize impact to the private sector and we believe we have done that through our new guidance. Receiving industry thoughts on the new legislation through the Contract Services Association was very helpful and much appreciated.**

For proposals already submitted, will the supplemental guidance change the negotiations if already in process or will we be able to pick up right where we stopped? If so what areas will be changed?

> **The Military Departments may have to complete some additional steps in their evaluation process prior to reaching an award decision. We believe minimal, if any, data will be required from offerors.**

When is the earliest date that awards can be made?

> **Subject to funding and the provisions of the new guidance, awards can be made as economic analyses are complete and recommendations are made to Service Secretaries.**

Are the Services preparing any supplementary guidance following the recent OSD guidance related to the changes to 10 USC 2688? If so, what are the timelines for supplementary guidance?

> **The Army is planning to follow DoD guidance and incorporate into UP process.**
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> **The Air Force is considering the requirements for issuing additional guidance in accordance with their program.**
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> **The Navy is expecting to issue supplementary guidance near the end of April.**

10 Year Terms

The Guidance Document leads one to conclude that future solicitations will be issued for a 10 yr term. Is this correct? The Guidance also suggests that terms can go beyond 10 yrs. Who will set the term in future solicitations? How will that term be arrived at? Does the Government expect bidders to propose the term? If so, will the Government give the industry some notion of what target we are shooting for? If the Solicitation includes a specific term and no bidder's offer is determined to economical, is the process over?

> **DoD retains conveyance authority for utility systems for a period not to exceed 50 years. To execute a contract longer than 10 years, the Secretary of the appropriate Military Department must determine the cost effectiveness of the longer contract term. This determination may be made without requiring separate proposals for each period. Bidders are encouraged to propose the most cost effective term, not to exceed 50 years. The Department expects 50 year contract terms will remain to be the most economical and prudent option under most circumstances.**

There are many potential costs and risks to the government associated with the 10yr contract vs the 50yr, what are the reasons for the government to proceed in pursuing the 10yr contract evaluation?

> **The Department is not pursuing 10 year contracts. Section 2833 of the National Defense Authorization Act amended the conveyance authority of 10 USC 2688 by requiring that contracts with terms in excess of 10 years be reviewed to confirm that the longer term will be cost effective. DoD has addressed that public law with the new guidance.**

If the 10yr contract were selected would the owner be required to sell the system every 10yrs or is this a 10yr contract with 4 renewals?

> **With full conveyance and contract award, the offeror will purchase and own the system indefinitely, regardless of the contract period. The contract term only relates to the operation and maintenance of the system. If a 10 year contract was awarded, a new proposal would be sought from the system owner when the 10 year period is up.**

Fair Market Value

Fair Market Value may be returned in a form other than a bill credit or lump sum payment. Please provide examples of what other forms could be?

> **Provisions in the National Defense Authorization Act for Fiscal Year 2006 eliminate the mandatory requirement to receive monetary consideration for fair market value. The new guidance provides the Military Departments with the flexibility to accept proposals which provide the best overall value to the Government. The Department may also accept in-kind consideration such as facilities, equipment or services.**

Margin of Error

Are the requirements for the margin of error being revised for future submittals only or are evaluators required to utilize updated evaluation procedures and methods for future and past submittals?

> **Prior to award, all economic analyses must include an explanation as to how margin of error considerations are addressed in developing the independent government cost estimate and carried forward in the price analysis and cost realism report. This requirement applies to all submittals not yet awarded. This is another aspect of the new legislation that should not present an impact to the private sector.**

25% Limit

Since the law limits awards to 25% of the systems available to be awarded, what direction and goals are you establishing to assure that even 25% could be awarded? What is the time schedule for all the remaining non awarded systems to be solicitated, negotiated or awarded?

> **There is no requirement to award a minimum number of systems. The Military Departments are evaluating all remaining eligible systems for cost effective conveyance. The Military Departments are developing and updating revised schedules for completion of the program. Evaluations and subsequent awards are anticipated through at least 2010.**

The number of utility systems which conveyance contracts may be entered into shall not exceed 25% of the total number of utility systems determined to be eligible for privatization under this authority as of January 6, 2006. Is this a requirement for all utility systems or only the solicitations submitted after January 6, 2006?

> **The baseline measure is the total number of systems determined to be eligible, for privatization as of January 6, 2006, stated differently, this is all systems not yet awarded or exempted as of that date. This restriction is not expected to impact or hinder the program during fiscal years 2006 or 2007.**

Funding

Are the appropriations established and in-place for solicitations to continue to proceed and with final negotiations?

> **DoD had planned to complete evaluations on all utility systems by September 2005 and funding was budgeted in accordance with that schedule. Currently, there are many evaluations yet to be complete. Additional funding must now be programmed into future budget years for remaining evaluations.**

Other

The Secretary of a military department may convey a utility system or part of a utility system. Is there any consideration to conveying an element of a system? How and what are each of the services doing and looking to improve operational efficiency?

> **With the expanded authority of 10 USC 2667, installations now have the authority and incentive to obtain a broad range of financial and in-kind considerations for leasing opportunities. The changes to Section 2667 expand the purposes for which lease proceeds may be used, and expands the type of consideration which may be accepted for leases. These changes maximize the utility and value of installation real property and provide additional tools for managing the installation's assets to achieve business efficiencies. Leasing and Enhanced Use Leasing are other approaches that may offer the Department numerous benefits.**

Since recent legislation from the National Defense Authorization Act implies that those DOD Agencies who have already declared a system to be "Economic Exemption-Post RFP" to be reviewed again because the government should cost was unrealistic or the value placed on assets was overvalued, how does the Department plan to reevaluate these systems and what time scale can industry expect resolicitation of these systems?

> **The NDAA language does not require the Department to re-open the evaluation of any system that has been otherwise declared exempt; however, nor does it prevent a Service Secretary from electing to do so if they perceive a benefit. Even in the circumstance where a given utility system has been exempted, the Component must pursue other measures to improve operational efficiency and sustainment where the given utility infrastructure is unreliable.**

Will any of the utilities that previously received no or limited interest from Industry be re-issued by any of the Services?

> **No re-solicitation is required for systems that have been exempted due to lack of market interest. However, as stated previously, the Component must pursue other measures to improve operational efficiency and sustainment where the given utility infrastructure is unreliable.**

What is the status of Reversionary clauses?

> **Permanent conveyance allows the Department to take advantage of efficiencies in the private sector and get out of a business not deemed to be a core mission area for the Department. The Department's preferred approach is to permanently convey all rights and title to utility systems whenever economical. When permanent conveyance is not economical, systems may still be evaluated for sole sourcing, reversion or some other alternative proposal with conveyance of a lesser estate.**

When may the industry expect the OSD guidance on jurisdiction for public utilities regarding utility privatization?

> **A final report and opinion from OSD general counsel regarding the jurisdiction for public utilities is expected by the end of May 2006.**