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|--|--|-------------------------------------|---|---|--------------------------|
| AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT | | | 1. CONTRACT ID CODE K | | PAGE OF PAGES 1 12 |
| 2. AMENDMENT/MODIFICATION NO. 0003 | | 3. EFFECTIVE DATE March 13, 2000 | | 4. REQUISITION/PURCHASE REQ. NO. SCO600-00-0697 | |
| 5. PROJECT NO. (If applicable) | | | | | |
| 6. ISSUED BY DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN ROAD, SUITE 4950 FT. BELVOIR, VA 22060-6222 BUYER/SYMBOL - KATHLEEN CAHILL/DESC-APP PHONE (703) 767-8127 P.P. 8.2 | | CODE SCO600 | | 7. ADMINISTERED BY (If other than Item 6) CODE | |
| 8. NAME AND ADDRESS OF CONTRACTOR (NO., street,city,county,State,and ZIP Code) | | | X | 9a. AMENDMENT OF SOLICITATION NO. SP0600-00-R-0009 | |
| | | | | 9b. DATED (SEE ITEM 11) January 19, 2000 | |
| | | | | 10a. MODIFICATION OF CONTRACT/ORDER NO. | |
| | | | | 10b. DATED (SEE ITEM 13) | |
| 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS | | | | | |
| <p><input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input checked="" type="checkbox"/> is not extended</p> <p>Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment;(b) By acknowledging receipt of this amendment on each copy of the offer submitted; or(c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p> | | | | | |
| 12. ACCOUNTING AND APPROPRIATION DATA (If required) | | | | | |
| 13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14. | | | | | |
| A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. I2.05 CHANGES-FIXED PRICE (AUG 87) | | | | | |
| B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b) | | | | | |
| C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.01 | | | | | |
| OTHER (Specify type of modification and authority) | | | | | |
| E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office. | | | | | |
| 14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) | | | | | |
| This amendment is issued to correct and or clarify the following: | | | | | |
| See Attached. | | | | | |
| Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect. | | | | | |
| 15A. NAME AND TITLE OF SIGNER (Type or print) | | | 16A. NAME OF CONTRACTING OFFICER JACOB R. MOSER | | |
| 15B. NAME OF CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign) | | 15C. DATE SIGNED | 16B. UNITED STATES OF AMERICA BY _____ (Signature of Contracting Officer) | | 16C. DATE SIGNED |

1. Page B-4 and B-5 Replace Schedule B-1 with the following Schedule B-1.

SCHEDULE B-1
 Utility Service Payment by the Government

(Installation Name)

| CLIN^a | Utility System | | | |
|-------------------------|---|-------------|-------------------------------|--|
| Sub-CLINs | Supplies/Services | Unit | Monthly Service Charge | Total Annual Amount^b |
| AA | Monthly Credit as Payment for Purchase Price. ^c \$_____ amortized over the first _____ months of service at an interest rate that is (specify either of the following) _____ percentage points above or _____ percentage points below the annual interest rate on U.S. Treasury Bonds in effect at the time of award. ^d | LS | \$(_____) | \$(_____) |
| AB ^e | Fixed Monthly Cost to Operate and Maintain the Utility System for Electric, Natural Gas, Water, or Wastewater Utility Systems. (See B.5.2, <i>Service Charges</i>). | LS | \$ _____ | \$ _____ |
| Capital | Fixed Monthly Capital Charge (see B.5.2, <i>Service Charges</i>) The Contractor shall provide utility service in accordance with Section C, <i>Descriptions, Specifications, and Work Statement</i> . [AC - A(y)] | | | |
| AC | Recoverable Portion of the Purchase Price. (See B.5.2, <i>Service Charges</i>). ^c \$_____ amortized over the first _____ months of service at an interest rate that is (specify either of the following) _____ percentage points above or _____ percentage points below the annual interest rate on U.S. Treasury Bonds in effect at the time of award. ^d | LS | \$ _____ | \$ _____ |
| | Initial Capital Upgrades and Initial Renewals and Replacements. ^f (See B.5.2, <i>Service Charges</i>). [AD - A(x)] ^c | | | |
| AD | Project 01 ^f \$_____ amortized starting in month _____ over a total of _____ months of service at an interest rate that is (specify either of the following) _____ percentage points above or _____ percentage points below the annual interest rate on U.S. Treasury Bonds in effect at the time of award. ^d | LS | \$ _____ | \$ _____ |
| AE | Project 02 ^f \$_____ amortized starting in month _____ over a total of _____ months of service at an interest rate that is (specify either of the following) _____ percentage points above or _____ percentage points below the annual interest rate on U.S. Treasury Bonds in effect at the time of award. ^d | LS | \$ _____ | \$ _____ |
| A(x) | Project 0X (consecutively number each project) ^f \$_____ amortized starting in month _____ over a total of _____ months of service at an interest rate that is (specify either of the following) _____ percentage points above or _____ percentage points below the annual interest rate on U.S. Treasury Bonds in effect at the time of award. ^d | LS | \$ _____ | \$ _____ |

(Installation Name)

| CLIN ^a | Utility System | | | |
|-------------------|---|----|----------|----------|
| A(y) ^e | Continuing Renewals and Replacements. (See B.5.2, <i>Service Charges</i>). [This Sub-CLIN should not include the cost for initial renewals and replacements under Sub-CLINs AD-A(x)] | LS | \$ _____ | \$ _____ |
| Deductions | Monthly Deductions | | | |
| A(z) | Monthly Credit to the Government for Delayed Response Times. (See B.5.2, <i>Service Charges</i>). ^g \$ _____/hour | | | |

^a CLIN number to be filled in by the Offeror. CLIN numbers are shown in Schedule A paragraph B.3, *Systems to be Privatized*.

^b The annual amount is calculated by extending the monthly service charge by 12 months.

^c The Purchase Price (Sub-CLIN AA), Recoverable Portion of the Purchase Price (Sub-CLIN AC), interest rate and amortization period are proposed by the Offeror.

^d The interest rate on U.S. Treasury Bonds (30-years) is as established in the most recent 30-year bond issue prior to the time of award, and published in the Federal Register. (<http://www.federalreserve.gov/releases/H15/update/>)

^e Price changes for Sub-CLINs AB and A(y) will be determined IAW B.6, *Type of Contract-Fixed Price with Prospective Price Redetermination*, and G.3, *Service Charge Adjustment*.

^f Recovery of investment on individual projects will begin at the time improvements are put in used and useful service in accordance with the Offeror's transition plan, see paragraph C-13.4.3, System Upgrades.

^g For proposal purposes the Offeror shall propose only a dollar per hour credit to the Government. During Contract performance the hours per month will be determined for each month of service and the total monthly credit will be calculated and credited against the monthly invoice.

2. Page B-6 B.5.2 - Replace entire section with the following:

B.5.2 Service Charges

Prices proposed for Sub-CLINs AB and A(y) shall be based on expected price levels during the first two years of operation. The effect of price inflation on costs incurred in years subsequent to the first 2 years of operation will be considered as part of the price redetermination process defined in paragraph B.6, *Type of Contract – Fixed Price with Prospective Price Redetermination*.

B.5.2.1 Sub-CLIN AA: Monthly Credit as Payment for Purchase Price

The dollar amount shown in Sub-CLIN AA is a credit to the Government applied to the Monthly Fixed Charge in lieu of an up-front payment for the purchase of the utility system.

The dollar amount shown in Sub-CLIN AA shall be calculated by amortizing the purchase price over the Offeror's proposed number of months at the Offeror's proposed cost of capital. The proposed cost of capital shall remain fixed throughout the amortization period. After the purchase price is fully paid, Sub-CLIN AA will be eliminated.

B.5.2.2 Sub-CLIN AB: Fixed Monthly Cost to Operate and Maintain the Utility System for Electric, Natural Gas, Water, and Wastewater Utility Systems

The dollar amount shown in Sub-CLIN AB is payment for the recovery of costs for system operation and maintenance (O&M), as well as any and all administrative and general costs. This may include, but is not limited to, the cost for all day-to-day O&M, scheduled preventive and predictive maintenance, maintenance office expenses, and general and administrative costs.

Typical cost categories might include, but are not limited to, all labor (direct and indirect), materials and procurement costs, insurance, equipment, general and administrative, and overheads, etc.

B.5.2.3 Sub-CLIN Capital: Fixed Monthly Capital Charge

Sub-CLIN Capital is payment for the recovery of costs for capital investments made in the utility system [includes Sub-CLINs AC-A(y)].

B.5.2.3.1 Sub-CLIN AC: Recoverable Portion of the Purchase Price

The dollar amount shown in Sub-CLIN AC is payment for the recovery of a portion of the purchase price paid for the utility system. The dollar amount shown in Sub-CLIN AC must be between zero and 100 percent of the amount shown in Sub-CLIN AA and should reflect the portion of the purchase price that the Offeror proposes to recover from the Government.

The dollar amount shown in Sub-CLIN AC shall be calculated by amortizing the proposed portion of the purchase price to be recovered over the Offeror's proposed number of months at the Offeror's proposed cost of capital. The proposed cost of capital shall remain fixed throughout the amortization period. After recovery of this Sub-CLIN is complete, Sub-CLIN AC will be eliminated from the Fixed Monthly Capital Charge.

B.5.2.3.2 Initial Capital Upgrades and Initial Renewals and Replacements

The dollar amount shown in Sub-CLINs AD-A(x) is payment for the recovery of costs for capital investments for initial upgrades and initial renewals and replacements. The Offeror shall not include the cost of initial renewals and replacements included under this Sub-CLIN when calculating the cost of continuing renewals and replacements under Sub-CLIN A(y). The dollar amount will be amortized over the Offeror's proposed number of months at the Offeror's proposed cost of capital. The proposed cost of capital shall remain fixed throughout the amortization period. Recovery of investment will begin at the time improvements are put in service, used, and useful.

The Offeror shall separately price each initial upgrade and initial renewal and replacement project included in the proposal. The Offeror shall consecutively number each Sub-CLIN according to the following:

- AD for the first proposed project
- AE for the next proposed project
- A(x) for consecutive projects until all projects are accounted for in the proposed price.

Within 30 days of completion of upgrades, the Contractor shall notify the Government by submission of the amortization schedule to be added to the fixed monthly charge. This amortization schedule shall include the schedule of the uniform monthly payments to be included in the Fixed Monthly Capital Charge and the principal remaining unpaid after each monthly payment is made. Once all scheduled payments in Sub-CLINs AD-A(x) are made, it will be eliminated from the Fixed Monthly Capital Charge.

The Government reserves the right to renegotiate this Sub-CLIN, or establish a new Sub-CLIN in a similar manner, for the recovery of future capital investments resulting from future upgrades. Future upgrades shall be clearly identified, in advance, in accordance with paragraph C.11.2, *Capital Upgrades and Renewals and Replacements Plan*.

B.5.2.3.3 Sub-CLIN A(y): Continuing Renewals and Replacements

The dollar amount shown in Sub-CLIN A(y) is payment for the recovery of continuing renewals and replacements. The Contractor shall refer to paragraph L.9.6, Section 1 for descriptions of method of calculating Sub-CLIN A(y).

The dollar amount shown should be calculated by taking into consideration the condition and future replacement needs of all system capital assets. The proposed charge for this Sub-CLIN should be made based on an assumption that average price levels during the first two years of operation will continue for the remaining 48 years of the 50-year contract. That is, no price inflation should be assumed beyond the average price levels in 2001 and 2002. The dollar amount shown shall be a monthly dollar value that when combined over the life of the system results in the complete recovery of investments for continuously renewing and replacing system assets as they fail or reach the end of their useful life. Sub-CLIN A(y) shall not include any initial renewals and replacements included under Sub-CLINs AD-A(x). During any price

redetermination, as defined in paragraph B.6, *Type of Contract – Fixed Price with Prospective Price Redetermination*, of continuing renewals and replacements the Contractor shall be required to justify changes from the baseline schedule for renewals and replacements. The baseline schedule is established as initially submitted in the Contractors proposal in accordance with paragraph M.4.2.3, *Capital Upgrades and Renewals and Replacements Plan*. The baseline schedule will be updated concurrent to the acceptance of any price redetermination.

B.5.2.3.4 Prepayment Option

The Government may prepay any or all capital investment costs that would normally be recovered through Sub-CLINs AD-A(x). Prepayments will reduce the remaining unpaid principal in the amortization schedule established for Sub-CLINs AD-A(x). The amortization schedule will be recalculated based on the new, reduced principal amount amortized over the number of months remaining in the original amortization schedule. The interest rate used in the recalculated amortization will be the same as that used in the original amortization schedule.

B.5.2.4 Sub-CLIN Deductions: Monthly Deductions

The dollar amount shown in Sub-CLIN Deductions is a credit to the Government for non-performance of contract requirements and standards.

B.5.2.4.1 Sub-CLIN A(z): Monthly Credit to the Government for Delayed Response Times

The dollar amount shown in Sub-CLIN A(z) is to credit the Government for actual response times that fail to meet the requirements as set forth in paragraph C.8, *Routine, Urgent, and Emergency Repair Response*. The dollar amount shown is a dollar value per hour. These credits are for Contractor delays in response to service calls against criteria established in paragraph C.8. The credit will be made to the Government on the next monthly invoice following the response delay.

3. Page B-8 B.6.1 - Replace the first sentence with the following:
Prices for services performed under Sub-CLINs AB and A(y) of this contract are subject to redetermination.
4. Page C-5 C.3.3.2 - Replace paragraph with the following:
The frequency and accuracy of secondary meter calibration should be in accordance with the manufacturer's recommendations and applicable regulations that govern meter calibration.
5. Page C-9 C.8 - Replace the last sentence of the last paragraph with the following:
This credit shall be as defined by Sub-CLIN A(z), *Monthly Credit to the Government for Delayed Response Times*.
6. Page C-13 C.11.2 - Replace the first sentence of the first paragraph with the following:
The Contractor shall prepare and submit a Capital Upgrades and Renewals and Replacements Plan that identifies capital upgrades and major renewals and replacements the Contractor intends to accomplish.
7. Page C-14 C.11.2.1 - Replace the paragraph with the following:
Initial renewals and replacements identified in the Capital Upgrades and Renewal and Replacement Plan will be paid in accordance with Sub-CLINs AD-A(x) when accomplished. Continuing renewals and replacements identified in the Capital Upgrades and Renewals and Replacements Plan will be paid in accordance with Sub-CLIN A(y). Continuing renewals and replacements shall be addressed in the Capital Upgrades and Renewals and Replacement Plan at a level of detail necessary to verify appropriate usage of payments made by the Government under Sub-CLIN A(y).
8. Page C-14 C.11.2.2 - Replace the first sentence of the first paragraph with the following:
Initial capital upgrades and improvements identified in the Capital Upgrades and Renewals and Replacements Plan will be paid for through Sub-CLINs AD-A(x) when accomplished.
9. Page F-1 F.1 - Replace the last sentence with the following:
If the Government terminates the contract, whether for convenience or default, the appropriate FAR termination clauses will apply.
10. Page G-1 G.2 - Replace the first sentence of the first paragraph with the following:
The Government will pay the Contractor for utility service through a Monthly Service Charge (sum of Sub-CLINs AA through Deductions inclusive).
11. Page G-1 G.3 - Replace the second sentence of the first paragraph with the following:
This paragraph applies to Sub-CLINs AB and A(y) only.

12. Page G-1 G.3 - Insert the following paragraph between the first and second paragraph:
For capital upgrades [Sub-CLINs AD-A(x)] resulting from changed service requirements, at the request of either party to this contract, and with reasonable cause, the Monthly Service Charge may be re-negotiated, at any time, in accordance with FAR 52.243-1 (Alt I), Changes - Fixed Price – Alt I.

13. Page H-2 H.5 - Replace with the paragraph with the following:

H.5 Notification

The Contractor shall notify the Government of the Contractor's intent to resell or transfer title to the utility systems described herein at least 120 days prior to the sale or transfer.

14. Page H-3 H.9 - Replace both paragraphs with the following paragraph:
The parties hereby recognize that a purchase by the Contractor of Government utility systems at less than fair market value may be treated as a CIAC and therefore taxable income to the Contractor. As a result, the Contractor may incur an associated income tax liability. Any such liability will be the Contractor's responsibility and shall not be the basis for any claim against the Government.

15. Page I-3 Delete the following clauses: FAR 52.223-2, Clean Air and Water and FAR 52.243-7, Notification of Changes

16. Page I-6 I.4 and I.5 - Delete the following reference: (see 24 CFR 4.120)

17. Attachment J.11 Lackland AFB Electric Distribution System Section J11.3 - Add "Lackland Training Annex (LTA)" to the second bullet as follows:

- Air Intelligence Agency (AIA), Lackland Training Annex (LTA), area power requirements shall comply with the following:

18. Attachment J.40 Example Completion of Schedule B-1 Replace with new J.40 Example Completion of Schedule B-1 dated March 2000 (see <http://www.desc.dla.mil/main/a/iscd.htm> for a copy).

19. Attachment J.51 Right of Way Replace with new J.51 Right of Way dated January 21, 2000 (see <http://www.desc.dla.mil/main/a/iscd.htm> for a copy).

20. Page K-8 Delete the following clause: FAR 52.223-1, Clean Air and Water Certification

21. Page L-11 L.7 - Add the following sentence to the third paragraph:
Ensure referenced client contact has the capability of addressing the items in the past performance questionnaire (i.e. technical, financial, regulatory, etc.).

22. Page L-11 L.7 - Add the following sentence before the last sentence of the fourth paragraph:

Contracts listed may include those entered into by the Federal Government, agencies of state and local governments and commercial customers.

23. Page L-14 L.9.2, Replace the second sentence of the first paragraph with the following:
If the Government terminates the contract, whether for convenience or default, the appropriate FAR termination clause will apply.

24. Page L-14 L.9.6 - Replace Section 1 with the following:

Section 1: Schedule B-1

Include a completed copy of the RFP Schedule B-1, *Utility Service Payment by the Government*.

To meet the legislative authority allowing for privatization of DoD utility systems, the Government will use the Sub-CLIN data in Schedule B-1 to develop a projected 25-year cash flow. The projected 25-year cash flow will be prepared based on total annual data provided in Sub-CLINs AA through A(y). Sub-CLIN Deductions will not be included in the economic analysis. The present value of the projected cash flow will be calculated and compared to the Government's present value estimate for a 25-year cash flow for Government ownership and operations. Present values will be calculated at the discount rate specified in Appendix C of OMB Circular A-94 that is current at the time proposals requested herein are due. Each Sub-CLIN will be extended according to the following to arrive at an annual value:

Sub-CLIN AA – Monthly Credit as Payment for Purchase Price: Amortization of the purchase price calculated as a monthly credit against the cost of the utility service. Monthly amortization values will be calculated for the time period and at the annual interest rate proposed by the Offeror. The monthly rate will be extended by 12 months to reach the annual cost. After the time period proposed by the Offeror expires, this portion of the monthly fixed rate will be removed from the cash-flow projection.

Sub-CLIN AB – Fixed Monthly Cost to Operate and Maintain the Utility System for Electric, Natural Gas, Water, and Wastewater Utility Systems: The monthly rate will be extended by 12 months to reach the annual cost. The annual O&M cost will be included in each year of the cash-flow projection.

Sub-CLIN Capital – Fixed Monthly Capital Charge: The annual amount included in each year of the 25-year cash flow will be the sum of the Sub-CLIN AC through A(y) monthly rates and then extended by 12 months.

Sub-CLIN AC – Recoverable Portion of the Purchase Price: Amortization of the recoverable portion of the purchase price calculated as a portion of the fixed monthly payment. The monthly amortization value will be calculated for the time period and at the annual interest rate proposed by the Offeror. Sub-CLIN AC will be removed from the cash-flow projection for the years after the time period proposed by the Offeror expires and the purchase price less system value is completely recovered.

Sub-CLIN AD-A(x) –Initial Capital Upgrades and Initial Renewals and Replacements:

Amortization of the initial upgrades and initial renewals and replacements calculated as a portion of the fixed monthly payment. The monthly amortization value will be calculated for the time period and at the annual interest rate proposed by the Offeror. After the time period proposed by the Offeror expires and the cost of the initial improvements is completely recovered, this portion of the monthly fixed rate will be removed from the cash-flow projection. For the purpose of developing a projected cash flow, initial upgrades proposed by the Offeror IAW paragraph C.13.4.3, *System Upgrades*, shall be clearly distinguishable from one another, as defined in paragraph B.5.2.3.2. Independent cash flows will be established for each proposed upgrade based on the amortization period and interest rate proposed.

If upgrades are proposed, and the Government deems the projects are necessary, the Government will appropriately handle the cost of the upgrade, in the economic analysis, such that it does not influence the economics of the Offeror proposal.

Sub-CLIN A(y) – Continuing Renewals and Replacements: Calculated as a portion of the fixed monthly payment dedicated to renewing the system to ensure a reliable and current system. The annual cost for normal renewals and replacements will be included in each year of the cash-flow projection.

Sub-CLIN – Sub-CLIN Deductions: Monthly Deductions: Monthly deductions will not be included in the cash-flow projection.

Sub-CLIN A(z): Monthly Credit to the Government for Delayed Response Times: Monthly credits for delayed responses will not be included in the cash-flow projection.

25. Page M-2 M.4 - Replace first sentence with the following:
The five evaluation factors are Mission Capability, Past Performance, Proposal Risk, Socioeconomic Plan, and Price.
26. Page M-7 M.4.3.1 - In the table under the column labeled "Rating", replace "Excellent/High Confidence" with "Exceptional/High Confidence".
27. Page M-7 M.4.4 - Replace first two paragraphs with the following:
This factor focuses on the risks, weaknesses, and strengths associated with an Offeror's approach and experience. Proposal risk will be assessed at the Mission Capability subfactor level.
Proposal risk represents the risks that are identified with an Offeror's proposed approach and experience as it relates to accomplishing the requirements of the solicitation.

FUTURE QUESTIONS: Please allow 2-3 weeks for receipt of answers to questions. Additional questions will only be answered if DESC determines the answer has not already been provided. No response by the Government will not constitute a reason to delay the closing of this RFP. If necessary the issue can be addressed during negotiations.

FOR INFORMATION ONLY: Attachment 1 and 2 are not a part of Amendment 0003. Attachment 1 contains questions and answers that have been addressed concerning solicitation SPO600-00-R-0009. Answers are provided for clarification purposes only and do not change any part of the RFP. If a question resulted in a change to the RFP, a reference to see the amendment is provided. Attachment 2 contains a copy of a memorandum from the General Counsel of the Department of Defense regarding the roles of state laws and regulations in utility privatization.

ATTACHMENT 1

1. Will the Contracting Officer accept the contractor's Operational Transition Plan prior to or at the time of award?

Per sections L and M the operational transition plan is required as part of the Offerors proposal. Therefore it will be used during evaluation and negotiation sessions and accepted at the time of award

2. Is the contractor required to have a state of Texas electrical utility permit to operate the electrical utility systems at the time of contract award.

No.

3. Who is to provide billings and to which entities for the commodity delivered by the utility system under the contract?

Commodity billing will not be required.

4. What are the applicable SCA wage determinations for San Antonio?

When DESC receives the official rates from DoL, the RFP will be amended with the information.

5. What is the Government's valuation of the existing utility system and what was the basis used to come up with the value?

Information is procurement sensitive and not releasable.

6. Identify what costs are to be considered in determining the Government's long term costs for utility services. This is not an A-76 cost study, so there should be a reason to not release the costs to be considered, the methodology to be used, and the cost figures themselves. Does the term utility services as it is used here mean only utility transmission services?

The Government's long term costs for utility services were based on the estimated operating and capital costs, including any cost to remedy system deficiencies, the costs of renewals and replacements and adjustments to the current operating costs to properly sustain the system over the long term. The actual costs determined for each system at each base are procurement sensitive and are not releasable. Yes, utility services means only utility transmission, no commodity.

7. Since nonregulated entities will receive contract price adjustments for increases in SCA wage rates, how will regulated utilities receive a price increase for their corresponding wage increases?

During price redetermination.

8. It would appear that initial capital upgrades under 0003AB could take place over a period longer than two years. Why is the price redetermination clause not applicable to line item 0003AB?

We anticipate that offers will be able to propose firm fixed prices for this work.

9. Will the Government make an election as to go overhead or underground prior to the inclusion of a project under line items 0003AB or 0003AC?

Yes, Please refer to the requirements listed under Utility Specific Attachments.

10. Will the Government pay through sub-CLINs 0003AB or 0003AC for all upgrades or renewals? In other words, are there any such projects that would have to be performed by the contractor and not be funded through either of these two sub-CLINs?

Paragraphs C.3.1 and C.11.1 state the Contractor is responsible for funding upgrades and renewals. Sub-CLIN 0003AB and 0003AC are for the recovery of investments made by the Contractor. To the extent projects are funded by the Government they will be funded through these sub-CLIN's. It is conceivable that projects could be undertaken that are not funded by the Government, for example projects that do not benefit the Government.

11. Section B.2.4.2 states that the Government may choose to use FAR and Federal Property & Administrative Services Act of 1949, to what extent will they apply to the sale of utility system?

Any processes/methods are reflected in the RFP.

12. Section B.5.2.3.3 in the fourth sentence (which is in parenthesis) appears to have something missing. Since future renewals and replacements cannot all be identified, how is a cost baseline to be developed for price redeterminable purposes? Sub-CLIN 0003AB is for the known capital renewals and replacements, so cannot be a baseline for unknown projects. The initial projects will have to address bringing the system up to current standards so these will be one time projects which would make the initial projects inappropriate as a baseline

The referenced paragraph deals with Sub-CLIN 0003AC, Sub-CLIN 0003AB is only for initial upgrades and improvements and is not subject to redetermination. The baseline is for renewals and replacements and is based on the Offerors proposal in accordance with the schedule in M.4.2.3.

13. When do you contemplate under section B.6.4 that agreements would be reached to vary the final period? In the technical proposal? After the award?

After award and near the end of the contract 50 year term.

14. Section C.1 provides that in the event of conflict, the Bill of Sale controls over the contract. The contract appears to contemplate some kind of reversion in the future in Section H-4 and limitations on ownership, inconsistent with an outright sale in Section H-5.

H.4 has been deleted. H.5 has been replaced with a notification provision. See amendment.

15. Where is the term qualified utility providers defined? See Section C.2.1.

Not defined. It should be understood to mean responsible contractors. Demonstrated ability to meet Government requirements in the RFP.

16. With regards to Randolph AFB and Lackland AFB, section C.3.2.1 is understood to require the system to be brought up and remain consistent with City of San Antonio standards. Is that correct? If not, what are the specific local codes applicable to these two bases?

Please refer to paragraph C.3.2 and C.12. The Offeror is to propose what standards it will work to.

17. Section C.3.2.1 is understood to require a license from the Texas Utility Commission, at least for Randolph AFB and Lackland AFB. Is this license a precondition to award?

No, See answer to # 2.

18. What does the phrase prohibit or negatively impact implementation of any such future energy ... projects mean in Section C.3.4? Does this mean that the contractor has to agree now to construct or make whatever changes the Government comes up with without any limitation?

The Government reserves the right to implement projects that will reduce their commodity usage. In most cases these will be internal to the buildings and will not involve this contractor. If the Government elects to implement a project for energy saving purposes that does involve the contractor it will be handled similar to any other upgrade or improvement project. Refer to Par C.11.

19. Under what conditions does the Government contemplate that the contractor would be a supplier of the commodity, since the contract does not cover supplying the commodity? Section C.3.5.

If purchase of commodity is regulated, commodity will be purchased separately from the required source. If commodity is deregulated, commodity will be purchase from the source the Government selects in a separate competitive procurement.

20. What factors would be considered for approval to use the utility infrastructure to serve customers off base? Reference Section C.4.1. How would compensation be determined?

Compensation is negotiated. One factor may be available excess capacity allowing for increased financial benefit to the Government.

21. There appears to be a conflict between C.5.1.2 and attachments J11 and J19, which list tools, equipment, etc. Will all items listed in the attachments be included in the Bill of Sale?

The utility specific attachments provide information on tools and equipment that the Government intends to transfer. The final list will be made part of the Bill of Sale. See joint inventory in C.13.6.4.

22. When will a contractor not have title to facilities it builds and equipment it installs? See Section C.5.1.3.

The Government does not intend to hold the title for any facilities used exclusively for the utility service. In some rare cases where joint use (Government and the new owner) of a facility provides the greatest financial benefit, the Government may elect to hold the title.

23. What are the existing Installations Architectural Standards for Lackland AFB and Randolph AFB. See Section C.5.1.3.

Available in the Technical Library

24. What controlled/restricted access areas are at Randolph AFB and Lackland AFB? Reference Section C.5.2.6.

Available in the Technical Library

25. How accurately has the Government identified the existing locations of its utility lines? See Section C.9.6. What will happen if the initial Government information is incorrect?

Accuracy of drawings varies from place to place.

26. What are the installation procedures referenced in Section C.10 for Randolph AFB and Lackland AFB?

Available in the Technical Library

27. Is the contractor required to have the required permit at the time of transfer? Section C.10.1. If not, at what point in time will it be required to have these permits?

Any permits, licenses, etc. that are required must be in place prior to the contract start date.

28. What are the environmentally sensitive areas at Randolph AFB and Lackland AFB? Section C.10.2. How will the contractor know it is going to access such an area without advance identification of such areas on the base.

Available in the Technical Library

29. For purposes of section C.10.3, what is the definition of modification of or other significant action? What regulation describes the requirements for such environmental assessment?

Defined by NEPA. Also see ROW attachment 1 (F) for Air Force and Navy sites.

30. Is Section C.11.1 a broader requirement or responsibility than under B.5.2.3.2, B.5.2.3.3, and C.11.2?

C.11 describes the work to be reimbursed under sub-CLINs 0003AB and 0003AC as described in B.5.2.3.2 and B.5.2.3.3.

31. Does Section C.11.2 cover only projects to be performed during the first five years of the contract?

This is for the entire contract. Provide information on the next five years. Update yearly.

32. Does Section C.11.2.1 cover only projects to be performed after the first five years of the contract?

See answer to # 31.

33. The Government needs to provide its list of new service requirements and anticipated disconnections before offerors can develop their plan. Section C.11.2.4. When will this list be furnished to offerors?

Section J includes the initial information, as it is known now. The Government will provide this information as new requirements and disconnections become necessary and will be coordinated with the annual plan submission. However, the contractor should check with the Government when preparing their updated Plans as to any changes.

34. Is the contractor required to excavate the existing system for purposes of Section C.11.2.5?

The Government is not requiring the contractor to excavate the system. The contractor is responsible for knowing the condition of the system as necessary to provide the required utility services.

35. Is the electrical systems at Randolph AFB and Lackland AFB currently being operated and maintained in accordance with all applicable federal, state, and local laws and regulations? Section C.12. If not, to what extent are they not?

If any deficiencies are known to exist, that information will be provided in the technical library.

36. Section C.13 states the contractor is to use the transition period to hire a work force, but Section C.13.2 states the contractor is to be fully staffed at 12:01 AM contract start date.

Contract start date (as proposed by the offeror and accepted by the Government) is the day the contractor takes over full operation which is some time after the contract award date

37. As to Section C.13.4, what will be inventoried?

Everything being transferred.

38. What latitude will offerors be given as to installing new meters within 30 days of contract award? Section C.13.4.2.

The RFP indicates 30 days or otherwise agreed upon. In the offer, alternate schedules can be provided with an explanation as required in section L.8.2.

39. Section C.13.4.3 requires offerors to submit a plan for upgrades. Will offerors be given additional access to the physical site to do this?

Additional site visits may be considered upon request.

40 Will offerors be given additional access to facilities other than at the site visit? If so, how will that be arranged. As to Section C.13.5, other than environmental permits, what other notifications will be given?

A follow-up site visit will be available upon request through DESC. The Government will initiate all notifications that result in the termination or transfer of permits.

41. As to Section F.1, it references Section H-4, which does not exist.

Correct, see amendment.

42. Section F.2 is inconsistent with Section C.13, which gives 30 days to transition to full services.

See C.13.2 paragraph 3, the Contractor will be fully operational and responsible on contract start. The 30 days beyond will be provided only if Government funding and employees are available. During this period, if it occurs, the Government will only be available in an advisory capacity.

43. Section F.3 appears to violate the 50 year statutory limit on utility services.

An option provision of this nature is not a violation of the statutory limit.

44. What is section H-4? It is referenced, but it is blank.

Deleted. See amendment.

45. Section H.5 is inconsistent with an outright sale of the utility system. Which controls -- the Bill of Sale or this provision?

H.5 has been revised. There is no conflict. See amendment.

46. Does the RFP contemplate a complete transfer of ownership of the utility system. See the restrictions in H-5. It is apparently being sold, but what happens at the end of the contract.

The sale of the system assets is permanent and forever. See answer to 45.

47. As to Section H.10, are initial capital upgrades, renewals, and replacements only those items that need to be done as of the date of award as opposed to items that presently can be forecasted to be needed to be done at a specific date in the future?

Initial capital upgrades are those that are contained and specifically priced in the proposal.

48. Does Section H-5 prohibit the resale of the utility system?

H.5 has been rewritten into a notification provision. See amendment.

49. As to Section H.8, what existing hazardous substances are part of, connected with, or associated with the electric utility system at Randolph AFB and Lackland AFB.

If any exist they will be identified in the information provided in the technical library.

50. Is it correct that under Section H.8.1 the Government will do remediation for existing hazardous substances at Government expense?

The resulting service contract is not a remediation contract. The Government will be responsible for handling existing hazardous substances and contamination that occurred prior to the sale of the system.

51. Section I, para. 1.4 and 1.5, should reference 29 CFR § 4.120.

Deleted, see amendment.

52. Where are the rates referenced in Section I.6.1 for Randolph AFB and Lackland AFB?

See answer to # 4.

53. Please produce a copy of all reports or evaluations of the existing condition of the utility system with regards to:

- A. Needed repairs
- B. Needed upgrades
- C. Environment conditions
- D. Safety conditions
- E. Reliability problems

Available in the Technical Library.

54. In *Section B.3 Systems to be Privatized*, Schedule A-2 does not include the water system at Fort Bliss. Does the government intend to include the privatization of the water system at Fort Bliss in this RFP or will a separate RFP be issued?

Ft Bliss water is not included in this RFP. It is being handled separately.

55. *Section C.5.13 Contractor Facilities* states that supporting utility services for contractor facilities (gas, electric, phone, etc.) can be purchased from the government at a rate to be negotiated that will be equivalent to other non-government tenants of the installation. Will the government provide examples of such rates? Please explain how the government will treat differences in such rates during the evaluation process.

Reimbursable rates are calculated every year (AF form 3556). Previous years rate sheets will be available in the technical library. We anticipate rates will be the same for all offerors.

56. *Section C.5.1.3 Contractor Facilities* – What, if any, facilities will be available on each of the installations for offices and/or equipment storage facilities? What, if any, space will be available on each installation so that the contractor may construct office and/or equipment storage facilities?

Depends on the utility being considered. If the construction of office space or storage facilities is required the Contractor will need to obtain ROW access to an area. In some cases and if space is available the Government may rent the Contractor the needed space. Offerors should address the need for onsite office space and storage in their proposal.

57. *Section L.3.1.5 Site Visits* – How many persons from each offeror can attend each site visit and how many site visits can be made for each base between February 3, 2000 and February 15, 2000. Also, will follow-up site visits be allowed after February 15, 2000 if necessary?

Follow-up visits will be allowed after February 15, 2000 if necessary. The need for a follow-up should be brought to DESC's attention.

58. *Section L.3.1.5 Site Visits* – Will each installation have a specific schedule and timeframe for a group site visit or can each offeror schedule its own site visit independently?

There is a specific schedule for site visits. Follow up visits will be allowed but they must be scheduled through DESC.

59. *Section L.3.1.6* states that a technical library will be available beginning January 28, 2000. Where is the technical library located, is there one on each base? Also, will a list be provided identifying what information is available in the technical library?

There will be one at each base. POCs are as follows:

| | | |
|---------------------|---------------------------|-----------------------|
| <u>Lackland</u> | <u>Alan Bast</u> | <u>(210) 671-5233</u> |
| <u>Randolph</u> | <u>Clarence Denis</u> | <u>(210) 652-4212</u> |
| <u>Sheppard</u> | <u>Roberto Huezo</u> | <u>(940) 676-5682</u> |
| <u>Dyess</u> | <u>Tom Denslow</u> | <u>(915) 696-5628</u> |
| <u>Goodfellow</u> | <u>Chuck Kirking</u> | <u>(915) 654-3439</u> |
| <u>Laughlin</u> | <u>Lt Dana Repak</u> | <u>(210) 298-5960</u> |
| <u>Ellington</u> | <u>Maj Chuck Phillips</u> | <u>(281) 929-2638</u> |
| <u>Ft Bliss</u> | <u>Joe Mathis</u> | <u>(915) 568-3107</u> |
| <u>Ft Worth JRB</u> | <u>LCDR Simmons</u> | <u>(817) 782-7446</u> |

60. *Section K Representations, Certifications, and other Statements of Offerors – 52.223-1 Clean Air and Water Certification* requests that the offeror certify that the facilities are or are not listed on the Environmental Protection Agency (EPA) list of violating facilities. Since these facilities are currently government owned, the offeror cannot reasonably certify that the facilities are or are not listed on the EPA list of Violating Facilities. Will this section be removed or will the government provide sufficient information so that the offeror can respond to the certification statement?

Due to revisions in the Clean Air and Water Act, this clause is no longer required and has been deleted. See amendment.

61. *Section K Representations, Certifications, and other Statements of Offerors – 52.223-13 Certification of Toxic Chemical release Reporting* requests that the offeror certify that the facilities are or are not subject to the requirements of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 6607 of the Pollution Prevention Act of 1990. Will the government provide the Standard Industrial Classification (SIC) Code for all facilities so that a determination by the offeror can be made?

The facilities do not fall within SIC codes 20-39.

62. If projects currently under construction are not completed at the time of contract award, how will they impact contractor operations and will the contractor have any additional responsibility with unanticipated operational failures during start-up?

These, if any, will be negotiated on a case by case basis. Systems that are under construction will not be turned over until they are complete.

63. Since most of the utility systems are underground, construction, repair, and replacement of the utility systems will require some amount of trenching. If during such procedures the contractor finds soil or other type of contamination, who will be responsible for the environmental compliance (i.e. clean-up, fines, etc.)?

The entity responsible for the contamination will be responsible for all costs. If the contamination is clearly demonstrated to be the result of activities prior to ownership transfer the Contractor will not be responsible.

64. Will the offeror have access to all utility components, facilities, records, and personnel at each installation? If not, which installation and what items at each installation will access not be allowed?

Prior to receipt of proposals, all available information is provided in the technical library. Site visits will be available upon request. After contract award all available information will be provided to the contractor and access to the site is as provided in the ROW.

65. Are there any written reports, evaluations, tests, engineering studies or other information that was not included in the RFP indicating the condition of the existing facilities and components including the distribution and collection systems? If yes, will this information be provided?

All available reports should be in the technical library.

66. Will the number of personnel for the daily operations of the utility systems be provided? If so, what is the number of personnel by installation, type of utility system, and percentage time dedicated to the utility?

No.

67. Will a detailed evaluation and assessment of the condition of the utility systems be required or allowed as a component of the Technical Proposal - Operational Transition Plan and/or Initial Capital Upgrades and Initial Renewals and Replacements Plan. If yes, should this also be included in the Cost Proposal? If no, will the military allow for the testing and evaluation of the utility systems during the scheduled site visits?

No evaluation is required. However if additional testing is required the offeror needs to request a follow-up site visit through DESC.

68. Will a detailed list of historical expenses (such as chemicals, sampling, electricity, wholesale contracts, sludge hauling) be provided?

No.

69. Will a list of existing contractors and subcontractors for utility services for each installation be provided?

No.

70. Have there been any non-compliance orders issued by state or federal environmental regulators for the potable water, wastewater or industrial wastewater pre-treatment systems at any of the installations?

If any exist, they will be in the technical library.

71. Is the use of 12-point Times Roman font for the proposal equivalent to 11-point Arial font as required in Section *L.5.5 Pages and Typing*?

Please use the required font.

72. The draft RFP contained a reference in Section L.4 to a Certificate of Convenience and Necessity (CCN) which is typically associated with regulated public utility service. Why was the reference to a CCN (or CPCN) removed? Is there a requirement for a CCN/CPCN? How will a requirement for or inability to secure a CCN/CPCN be factored into the Government's review of a Statement of Qualifications (SOQ)?

A CCN is not required.

73. Attachment J33 at Section J33.4 states that Fort Worth Naval Air Station is within Texas Utility CPCN. Is the existence of or ability to secure a CPCN a contract requirement?

No.

74. Why were not Randolph AFB and Lackland AFB also identified as being within a CCN?

See answer to # 73.

75. Section B.2.1 states that utility services are being acquired. Which portion of the contract is considered to be utility services, so that non-regulated entities will know which services require SCA wages to be paid? Has a waiver been obtained for complying with FAR Part 41?

All of the RFP covers the procurement of utility services. The bill of sale covers the sale of the utility system. All services performed are part of the utility services being procured and therefore would be covered by SCA. FAR Part 41 indicates that clauses substantially the same as can be used in place of FAR Part 41 clauses.

76. Is it contemplated that providing electricity or natural gas will ever be made part of this contract?

See # 19.

77. Would (could) a privatized service be implemented under an existing GSA area wide contract if a local public utility is the sale contractor?

We intend to use a contract awarded under this RFP as the contract vehicle. Alternative proposals are permitted.

78. Has the DESC made a determination that privatized electric or natural gas service is subject to the jurisdiction of any of the regulatory bodies: the Public Utility Commission of Texas (PUCT), the Texas Railroad Commission (TRRC), or the City Counsel of the City of San Antonio in the case of Lackland AFB and Randolph AFB?

We have concluded that the privatization actions contemplated in this procurement are governed by Federal law.

A. If so, what is the basis for this determination for each of the affected utility systems?

B. If not, what is the basis for this determination for each of the affected utility systems?

See attachment 2.

C. If not, please reconcile this determination with the Clause I.5 which provides for regulated utility FAR provisions.

The Government may enter into a contract with a regulated utility. The effect of the regulated status of such an entity on the contract will be the subject of negotiation.

79. Since regulated utilities currently provide utility services to the locations in the RFP, would a proposal be considered nonresponsive if the contract was subject to regulatory approval? If so, would that be inconsistent with the contract provision to comply with all federal, state, and local regulations and ordinances? What would be the consequences if the regulatory authority reviewed a service contract and ordered changes to comport the contract with its rules and regulations and a utility's tariffs in general and with a cost of service basis for rates in particular?

A regulated utility should note any requirement for regulatory approval in its proposal. Any changes proposed by the state or local regulatory authority would be subject to approval by the Government.

80. Assuming further that a service contract is awarded to other than the local regulated public utility, what would be the consequences if the applicable regulatory authority determines:

The Government believes this RFP and the resulting contracts are governed by Federal law. We will not speculate on the potential consequences if other parties take a different position. Offerors may include provisions addressing these concerns in their proposals.

A. That the system owner is subject to its jurisdiction and that it cannot provide the required service in accordance with the terms and conditions of the RFP, if at all.

B. Would this be grounds for a termination for default? For the convenience of the Government?

C. What would happen to the sale of the utility system itself?

D. How would the price be determined if the Government needed to buy back the system because the owner could not operate it legally?

E. Will there be a reversionary provision?

81. What would be the consequences if the applicable regulatory authority orders a rate change? Would a rate change become effective prior to two years after a contract award? Would there be a mandatory renegotiation of contract rates?

Alternate proposals are allowed. Offerors should define the consequences of rate changes in their proposal.

82. The RFP contemplates that the contractor may later provide utility services to off-base locations. If that service by other than the local utility violated tariff restrictions on a resale (or redistribution) of gas or power, would this be grounds for a termination for default? For the convenience of the Government? Does an offeror or the Government assume regulatory approval risk?

The contractor would be responsible for securing any necessary approvals for service off base.

83. Referencing Section B.2.5 (Best Value), how does DESC intend to incorporate such concepts as regulated service, regulatory oversight and service obligations into its best value determinations?

The best value determination will be made based on the requirements of the RFP. The evaluation criteria are set forth in section M. These concepts would be addressed in M.4.4 proposal risk.

84. Conversely, would a regulated utility providing a regulated service tend to receive a relatively lower technical rating, especially if recognition of its regulated status and consistency with applicable rules, regulations and tariffs necessitated taking exceptions to one or more contract/RFP requirements?

If offerors take exception to any terms and conditions in the RFP they should point out the advantages to the Government of any alternatives they propose. The Government will evaluate advantages and disadvantages of any proposal received.

85. Referencing Section B.2.3 (Program Goals), the Government will retain no reversionary interest in the privatized utility system. What will be the consequences if, after the system is sold, a regulatory authority either:

See #s 78 and 80.

A. Determines that the system owner cannot own the system and/or provide the service in accordance with the contract terms and conditions? How will a base secure necessary service?

B. Determines that the service will violate a local (external) utility's tariff provisions and as such that utility is no longer required to deliver power or gas to the base under standard tariffs, if at all?. How will a base secure necessary service?

86. In accordance with Section L.4.4, does DESC believe that a single entity will have or be able to obtain a CPCN for both premises within 90 days, if at all?

No CCN or CPCN is required. There is no requirement for this to be done within 90 days. The 90 day requirement is from the Draft RFP issued in October 1999 not in the RFP issued in Jan 2000.

87. There are no apparent provisions to reflect the cost implications of potential changes to the rates or costs for the provision of upstream utility service to an installation. Does DESC assume that privatization will not change any upstream service arrangement or cost, regardless of which entity owns a privatized system, especially if a new system owner is not the upstream utility service provider? If so, please explain the basis for this assumption. Would not any analysis be flawed that did not take into account rate changes as a result of the privatization? How would a

true life cycle cost be calculated, if the impact of this contract on the rate structure being paid for the utilities was not considered?

To the extent that such changes are validated this will be taken into account in the price evaluation.

88. Referencing Section B.6.2 (Ceiling Prices), please identify any ceiling prices included in the contract. If none, what is the purpose of the clause?

There is no ceiling price. B.6.2 is part of a FAR clause (FAR 52.216-5). There is no deviation allowed to the language of the clause.

89. Referencing Section B.5.2.4 (Monthly Credit), the bill credits are for delays in responding to Section C.8 service calls. How is this credit to be calculated? How will it be evaluated if offerors use different assumptions for calculating it? Is this clause the exclusive Government remedy for delayed service?

The offeror will propose the monthly credit. It will be evaluated as stated in Section M. In addition to the credit the Government may have recourse to any other remedies available to it under the contract.

90. Referencing Schedule B-1, capital cost recovery begins when facilities are used and useful. Where should AFUDC-like costs be included in a cost proposal? Is AFUDC an allowable cost?

Any costs that the offerors are seeking to recover should be included in their bids. This may include AFUDC.

91. Referencing Section B.5.2.3.4 (Prepayment Option), any recalculated amortization is to be based on the interest rates in the original bid schedule. Please reconcile this clause with the standard terms of alternative financing sources (e.g., non-recourse financing), which generally requires a repayment adjustment based on the discounted difference in the payment streams under the bid interest rate and the interest rate at the time of the prepayment.

A. Was it DESC's intent to effectively preclude such alternative financing? Is DESC aware that a result of the clause will be to unnecessarily increase interest rates to account (properly) for prepayment risks?

It is not DESC's intent to preclude alternative financing. Alternate proposals are allowed.

B. To the extent loan placement (legal, due diligence, etc.) costs are fixed, how will these costs be recovered if there is a prepayment?

The offeror needs to take this risk into account in its proposal.

92. Referencing Section C.2.1 (Qualified Utility Providers), a compliance-related service change may require a change in the service charge (CLIN 0002 and 0003AC) in accordance with Section G.3.

A. Does the clause apply to the economic and/or service regulations by the PUCT, TRRC, and City Council of San Antonio for Randolph AFB and Lackland AFB?

Although the contract is governed by Federal law the offeror may incorporate state and local regulations in their offer.

B. If compliance requires a change in cost/price, is a charge change allowed during the first two years of the contract?

If the contract so provides.

C. How would the clause be applied if there is a different view on the application of an existing law/regulation? For example, the DESC in the first instance may contend that the service is non-jurisdictional, but a regulatory authority may subsequently rule otherwise (and have the ruling sustained in Federal court). Is the bidder to assume the risk of regulatory applicability?

See # 80.

93. Referencing Section C.2.1 (Qualified Utility Providers), what is the meaning of the word obligation in the second sentence? Does it mean more than the contractor must comply with the terms of the contract and the regulations and standards set by various applicable Texas regulatory bodies?

See # 80.

94. Referencing Section C.2.1 (Qualified Utility Providers), the requested service must comply with applicable laws and regulations. Would these vary for regulated and non-regulated utilities? If so, how will the Government ensure it gets the same quality of service from both types of entities?

See # 16, and 78-80.

A. Please identify the specific applicable laws, regulations and ordinances that would pertain to the provision of electric and natural gas utility services at Randolph AFB and Lackland AFB. If DESC has not made a specific determination in this regard, how will it be able to properly evaluate the technical proposals and how will it be able to monitor performance of a contract? Are the City of San Antonio's ordinances applicable to a utility provider on Lackland AFB and Randolph AFB? If not, what is the basis for this determination?

B. Assuming that different laws, regulations and tariffs would apply to a local utility and to another entity, this could place the local utility at a competitive disadvantage if utility-applicable

provisions were more stringent and as such more costly to perform. Will DESC differentiate between different sets of laws, regulations and tariffs in its technical and cost evaluations? If so, how? It is presumed that any such differentiation would have to identify the “applicable” laws, regulations and tariffs.

95. Does DESC intend to use the standard FAR order of precedence clause under which contract terms would override tariff terms or other applicable regulations and ordinances? Or vice versa? If so, how would that conflict be resolved with the Section C requirement to comply with all regulations and ordinances?

See # 78-80.

96. Referencing Section C.3.2 (Performance Standards) whether a law or regulation is applicable will depend in part on whether or not the service (or service provider) is subject to the jurisdiction of the PUCT, TRRC, etc. Has the Government sought a determination of the jurisdictional status for each electric and gas system/service at Randolph AFB and Lackland AFB? See, also Section C.3.3.2. If so, please provide it.

See # 78

97. Referencing Section C.3.2 (Performance Standards), does the term industry standard mean the utility industry standard in the geographic area where the Government installation is located? If not, the clause may conflict with the provisions of the RFP that relate to the applicability of laws, regulations, and ordinances:

A. Referencing the term similarly situated utility service customers, does this phrase refer to San Antonio customers for Randolph AFB and Lackland AFB? If not, this language creates a different standard for a local utility (which has other utility service customers in the area) and another entity which would not have similarly-situated customers.

The general standards set forth in the RFP are applicable to all offerors.

B. The contract requires that service practices must be modified as applicable federal, state or local laws/regulations are changed. Is there an order of precedence for these regulations in the event of conflict?

Federal laws and regulations take precedence.

C. The above-noted concerns could require that a local utility create and operate under two performance standards: one applicable within the base and another applicable to its other customers (including the providing of electrical utility service to the base). If so, would any costs (direct or indirect) associated with maintaining dual standards be fully recoverable under the change of rates provisions?

Should be addressed in the proposal.

98. Referencing Section C.3.2.1, electric public utilities (and only regulated public utilities) are exempted from certain provisions in the NESC. This exemption could reduce an installation's total utility service costs (e.g., in terms of using the transformation capacity actually needed and not some arbitrary capacity and hence lower transformation losses).

A. Will DESC incorporate the cost implications of this and other code or operational differences between a regulated electric utility and an unregulated entity in its RFP price evaluation and/or comparative life cycle cost assessments? If so, how? If not, how will an accurate cost comparison/cost realism be performed?

Yes, a best value source selection allows for tradeoffs between cost and technical capabilities.

B. What steps, if any, will DESC take to determine if any entity qualifies as an exempted public utility?

DESC will take whatever steps it deems necessary to determine the status of any offeror.

99. Referencing Section C.3.3 (Secondary Metering), who is responsible if there is a dispute regarding a secondary meter reading?

Any dispute on meter reading will be between the Government and the contractor.

100. Referencing Section C.3.3 (Secondary Metering), it is understood that some submeters are used for reimbursable/tenant billing. Is a tenant a customer of the contractor or the installation?

The installation.

101. Referencing Section C.3.3.1 (Future Secondary Meters), since Section G.3 does not permit rate changes for the first two contract years, would a contractor still be required to install additional meters if so directed by the Government? How will it be compensated?

If there is a change in requirements, rate changes would be handled under the Changes clause, FAR 52.243-1 Alt 1. See amendment.

102. Referencing Section C.3.5 (Commodity Supply), the clause may violate the terms of a local utility's tariffs related to prohibitions on a sale for resale if the internal utility system is owned by another entity. Has DESC determined whether such a violation would occur at Randolph AFB and Lackland AFB? Which party would assume the risk and cost responsibility of such a violation?

The point of purchase of the commodity is not changing. The product will be owned by either the Government or the commodity provider.

103. Referencing Section C.4 (Service Area), must the contractor provide service to all areas and customers within an installation, even if a building is occupied by a tenant?

All areas and customers within the installation are considered part of the Government and will be serviced under this RFP unless otherwise specified.

A. What are the implications if an installation's housing stock is privatized and the houses are owned by a developer and not the Government?

The ownership of the land does not change, the housing is still part of the Government housing for purposes of this contract.

B. Will the developer be a customer of the Government, the contractor or the commodity contractor? Will a tenant (renter) in a privatized housing area be a customer of the Government, the contractor and/or the commodity contractor?

The developer and the tenant will be considered a part of the Government.

104. Referencing Section C.4 (Service Area), will any designation by the ACO of an area where service shall commence/discontinue be grounds for a Section G.3 charge adjustment? Must a contractor comply with all such designations, even if it is not adequately compensated within two years of contract award?

Commencement or discontinuation of service changes the description of services to be performed and would be handled as part of the Changes clause, FAR 52.243-1 Alt 1.

105. Referencing Section C.4.1 (Use of Facilities), the clause as written seems to authorize the contractor (even if other than a local utility) to provide a utility service to areas or customers outside of an installation, even if to do so may otherwise be in contravention of state or local law as to Randolph AFB and Lackland AFB. What adjustments will be made to the contract if the contractor is precluded by from providing services outside of either Randolph AFB and Lackland AFB?

No authorization is given. This paragraph is only stating that the contractor may provide service outside the base. See answer to question 82.

106. Referencing Section C.4.1 (Use of Facilities), in San Antonio the local utility is the only entity that can integrate a privatized system with off-base electric distribution facilities for Randolph AFB and Lackland AFB, and as such is the only entity that can use a privatized system to serve outside areas or customers (or vice versa). The award of a privatized service contract to an entity other than CPS, the local utility, would prevent favorable integration opportunities. How will this situation be evaluated?

Such opportunities should be reflected in the proposal.

107. DESC seems to recognize that system integration offers tangible benefits, especially if it is extended to a contractor's ability to use its off-Base facilities to minimize the cost to extend or modify service to on-Base locations. Other DoD installations have included system integration as a minimum service requirement, and DESC should do likewise. Will DESC consider the value of system integration in its evaluation process, since this is an advantage that only CPS can provide at Randolph AFB and Lackland AFB? If so, how?

Any advantages accruing from integration may be included in the price proposal.

108. Referencing Section C.5.1.3 (Contractor Facilities), is there an absolute requirement to comply with an installation's architectural standards, even if such standards may conflict with a local utility's rules and standards? Could a local utility's proposal be considered non responsive if it contained an exception to this requirement, when it is mandatory that it do so? This provision may conflict with the contract provision to comply with state and local regulations and ordinances. In the event of a conflict, which provision of the contract controls?

The offeror should identify any inconsistencies and any exceptions taken in its proposal. The base standards would prevail unless otherwise provided in the contract.

109. Referencing Section C.5.1.3 (Contractor Facilities), utility services can be purchased from the Government:

A. For electric and gas service, does this apply to the commodity (which by contract the Government will own) and/or the delivery of power or gas?

Commodity and distribution services.

B. How can a delivery service be provided by the Government if a contractor owns the wires and pipes (i.e., delivery facilities)? Does the Government intend to exclude all delivery costs from any negotiated sale price? Would this not violate policies on setting rates for reimbursable/tenant customers?

The Government intends to provide utility services to its tenants.

C. For a purchase by a contractor there presumably would be a related sale. If so, would this not potentially violate an external utility's resale provisions at Randolph AFB and Lackland AFB?

We are not aware of any violation.

110. Referencing Section C.5.2.3 (Conflict of Interest), please provide standards for a determination of when or if a conflict of interest may exist. Assuming that a local utility in good faith hires a Government employee and thereafter it is determined that there is a conflict of interest, would any costs associated with the termination or transfer of the affected employee be recoverable from the Government? The clause could require taking an adverse personnel action in contravention of an offeror's internal equal opportunity or other employment practices.

Standards are available in DODR 5500.7, Joint Ethics Regulations (JER).

111. Referencing Section C.5.2.5 (QAE/QC Personnel), will DESC identify the personnel? If so, when? What is the Government quality control plan? Please furnish a copy.

QAE/QC personnel will not be identified. We are uncertain as to what documents are being requested.

112. Referencing Section C.7 (Service Interruption Plan), please explain the criteria which will be used with respect to the Government's acceptance/approval of a plan. There is concern that the acceptance/approval criteria may conflict with its system standards and thereby lead to a non-responsive proposal (if before contract award) or a conflict with otherwise applicable standards (if after contract award).

Criteria are identified in the RFP. Exceptions taken should be noted in the proposal. The RFP permits alternative proposals.

113. Referencing Section C.8.2 (Routine Service Requests), a routine service request may include new or relocated service locations. How is the contractor compensated for performing these requests?

This changes the description of services to be performed and would be handled under the changes clause, FAR 52.243-1 Alt 1.

A. Would a contract modification in accordance with the Section G.3 change of rates provisions/adjustment be required for the recovery of any associated costs? Please note that in accordance with Section C.9.3, the addition or deletion (but not a relocation) of a connection may not necessarily be the basis for a rate redetermination. Would such a rate redetermination be prohibited during the first two contract years?

Such rate redeterminations are not prohibited.

B. What is a reasonable cause for a change in a service charge?

See RFP section B.6, G.3 and the Changes clause, FAR 52.243-1 Alt 1.

114. Referencing Section C.8.2 (Emergency Service Requests), is the one hour response time a mandatory requirement or does it represent a best efforts standard?

If it becomes part of the contract, it will be mandatory.

A. If mandatory, would a failure to respond be grounds for a termination for default?

Termination for default is the last choice of the Government to handle noncompliance with contract terms and conditions. There are other contractual remedies available to the Government.

B. Is the Section B.2.5.4 monthly credit the exclusive means to assess a monetary penalty for non-compliance?

All contract remedies are available to the Government in case of failure to comply with contract terms.

115. Referencing Section C.9.3.1 (Temporary Connections), the contractor shall extend temporary service, but the Government will not pay for any temporary service connections without the authorization of the Administrative Contracting Officer (ACO). Does this mean the contractor must extend the service even if the ACO declines approval?

No.

116. Referencing Section C.9.4 (Scheduled Interruptions), the Government has the absolute and unilateral right to disapprove or cancel a scheduled service interruption if it might adversely affect an installation's mission and operations.

A. It is conceivable that, during the course of a scheduled interruption, the contractor may determine that such a cancellation might adversely affect the public health and safety or service reliability. Whose priorities take precedence?

This would be handled on a case by case basis. Concerns about cancellation of scheduled interruptions should be brought to the attention of the Administrative Contracting Officer or the Contracting Officer's Representative when the contractor receives a notice of cancellation.

B. If a curtailment is cancelled, will the Government compensate the contractor for the added costs of a directed work cessation? Is this grounds for a Section G.3 charge adjustment?

See Section F, FAR 52.242-15, Stop Work Order and FAR 52.242-17, Government Delay of Work.

117. Referencing Section C.12 (Environmental Compliance), under what circumstances (if any) would the contractor be able to recover any unexpected environmental compliance costs, especially during the first two years after contract award?

If new requirements were imposed.

118. Referencing Section C.11.2.1 (Renewals and Replacements), what is the purpose of the Government's verification of the usage of payments given the fixed price nature of the contract?

To ensure the Government will receive reliable service.

119. Referencing Section C.17 (Transitional Plan), the Operational Transitional Plan (OTP) calls for work to begin before the contract start date (defined in Section H.10). Will the Section B charges apply upon contract award or contract start? If contract start, does the Government intend that the contractor will not be compensated for work after award but prior to contract start?

There is no C.17. This is C.13. There is no line item for administrative costs associated in starting up service, getting permits, hiring personnel, etc. Payments will begin upon contract start.

120. Referencing Section G.3 (Service Charge Adjustment), under what circumstances, if any, would the contractor be able to recover any unanticipated costs that were incurred sooner than two years from contract award? Are there any provisions for a retroactive rate adjustment?

See amendment for new G.3 paragraph wording. There will be no retroactive adjustments.

121. Referencing Section G.3 (Service Charge Adjustment), the clause seems to give the Government the authority to decide rate adjustments initiated either by the Government or the contractor. This process is in direct contravention of the regulatory approval process for rate changes which would violate the contract provision for compliance with all federal, state, and local regulations and ordinances.

The offeror could propose a regulatory approval process in lieu of G.3.

122. Referencing Section L.3.1.4 (Non-Government Advisors), there is objection to CH2M/Hill. This company is or has stated an interest in submitting proposals to provide privatized service. CH2M/Hill is thus a potential competitor. The use of CH2M/Hill also raises at least the perception of bias. For example, it would not be in CH2M/Hill's interest to support the value of regulated service or to contend that a service is regulated in that the company is not a public utility. Because the RFP is a demonstration project, it is possible that the processes, results, etc. may set a precedent for actions elsewhere. It is also understood that CH2M/Hill is or is seeking to team with other concerns. This also raises the prospect of at least an appearance of bias or conflict. We note that the RFP seems to have a bias against a local public utility. An example is the Past Performance Information form (see question 43, below). CH2M/Hill provides contracted O&M services for large Federal, municipal, and industrial customers.

We do not perceive any conflict in CH2MHills work on the procurement.

123. Referencing Section L.8.2 (Alternate Proposals), if a local utility provides and the Government accepts an alternate proposal, will the Government be able to award a contract based on the alternate proposal without the need to modify the RFP?

Yes.

A. Would an accepted alternate proposal be deemed within the scope of the RFP?

Yes.

B. While exceptions to the deed of sale or real estate document are not allowed, are there other portions of the RFP that similarly may not be changed? Please identify them.

The Government will evaluate any alternative proposed.

C. Under what circumstances would taking an exception result in a downgrading of an offeror's technical proposal? Could a single exception or the cumulative weight of all exceptions result in a determination that a proposal is non-responsive or not within the technical range?

The Government will evaluate each proposal to determine its overall advantage or disadvantage to the Government. A proposal deemed to be disadvantageous may be downgraded. A proposal will not be downgraded simply because it takes exception to RFP terms and conditions. It is unlikely that exceptions will cause a proposal to be deemed non responsive. It is possible that the total weight of exceptions deemed to be disadvantageous could make an offer's rating fall outside the competitive range.

124. Referencing Attachment 1 (Past Performance Information), the form is inappropriate for these utility services because it is form tailored for a traditional Government contractor that provides contracted goods and services. It is not appropriate for a local public utility that provides service in accordance with a broad service obligation to a geographic area instead of discrete contracts. Also, a utility's largest customers based on demand are typically served at higher voltages (pressure) while the scope of the RFP is for a distribution service provided at lower (primary and secondary) voltages and pressure. Another concern is that the form apparently is the exclusive means to evaluate past performance.

The form is the method of getting references, external to the company, that can verify a company's capability.

A. Is it appropriate for a public utility to provide the information on the basis for broad classes of customers (residential or commercial), or for regions or total systems/subsystems?

We need POC's who can provide details on company capabilities. What/who these POC's represent is up to the offeror. Just explain who they are, what work is done for them, etc.

B. May an offeror provide past performance information not using the form? Will the DESC consider this information in its evaluations of proposals?

Yes, but we need at a minimum the following information: Name of contact, phone number, fax, address, email (if available), who they represent, a description of work performed, when, etc.

C. Is ownership of comparable facilities relevant? How so?

Yes, because this provides a basis for a determination as to whether a company is capable.

125. Referencing Section M.2 (Evaluation of a Statement of Qualifications), the last subfactor refers to a capability to perform the necessary operations and maintenance. Will the Government consider a capability of an offeror to legally own the system for which O&M is to be provided?

If a company feels this is a requirement they should address it in their proposal. It is the Government's opinion that state rules do not limit the ownership of a utility system located on a Department of Defense installation.

126. Referencing Section M.3 (Basis for Award), while the evaluation of an SOQ considers a capability to provide the service, the evaluation of proposals apparently does not. We note that an SOQ is not a precondition to submitting a proposal.

A. Will the Government consider a capability to provide service? If so, how?

Capability will be evaluated as part of the technical proposal

B. Does the Government intend to consider regulatory risks? Such risks may include:

i. A violation of an external utility's sale for resale provisions.

It is the Government's position that this does not apply since the owner of the system will not be buying commodity.

ii. A determination that only the local utility has the legal right to provide service.

It is the Government's position that this does not apply.

iii. Any service contract must be approved by the cognizant regulatory authority, and that authority might direct changes to the contract.

See # 79.

C. Conversely, has the Government determined that there is no regulatory risk. If so, what is the basis for this determination.

See # 78-80.

127. Referencing Attachment J40 (Example Schedule B-1), the example suggests allocating 15 percent of a system purchase price for the non-Government use of excess system capacity. Any such allocation would then be locked into the proposed Section B fixed-price monthly service charge.

Attachment J40 is only an example of one possible cause reducing the purchase price recovery. It is assumed that Offerors will each determine their own intrinsic value to owning the system.

A. Section C.4.1 requires the ACO s approval before privatized distribution facilities may be used to serve or benefit off-Base customers (i.e., a joint use of facilities). Any such service, as with all services, by contract must also apply with state and local regulations and ordinances. What will be the consequences if a rate reflects a joint use and that use is not approved, in whole or in part by the ACO? Would this be a basis to modify the service charge during the first two years of the contract?

If an offeror proposes such usage as part of their initial proposal, approval can be discussed during initial contract negotiations and incorporated into contract award.

B. Would any such rate adjustment be automatically applied? That is, would an offeror in any way be placed at risk if a joint use is not totally approved? Would this be a basis for an (automatic) rate redetermination?

Joint use should be approved in advance.

C. What will be the consequences if regulatory authorities disapprove?

See B.

D. Please reconcile the joint use implications noted above (per Schedule B-1 and C.4.1) with the consent requirement in Condition 11.2 of the Grant of Right-of-Way (ROW).

See A.

128. Referencing Grant of ROW (General), to the extent the Government s exercise of its rights under the ROW impose new/modified requirements on the contractor, how will a contractor recover its costs? Would this be grounds for a Section G.3 charge adjustment?

Yes.

129. Referencing Grant of ROW (Condition 1), the ROW shall automatically terminate if any part of the service premises is not used to provide services to customers. Please define the term customers. Does the term refer only to connection points within the service premise?

"Customers" means the Government.

A. Since the Grantor has discretion in granting a ROW renewal, standard utility practices would view a non-renewal as a termination of a customer's (i.e., an installation) service requirement and as such remove any further obligation to provide service to that customer. Does DESC concur?

The length of the ROW is longer than any contract awarded under this RFP.

B. To the extent there is a joint use of privatized facilities, please describe the related consequences if a ROW is terminated? Would the contractor be entitled to any compensation under the related service contract? Would there be a basis for an automatic rate adjustment?

Do not want to anticipate the consequences absent a specific set of facts.

130. Referencing Grant of ROW (Condition 4.2), the Government may require the removal or relocation of the Grantee's property. Under standard utility practices, this is a change in method of service for the convenience of a customer (the Government), and as such the cost of any removal or relocation would be the responsibility of the customer.

A. Please clarify which party is responsible for any such removal or relocation.

The Contractor is responsible for removal and/or relocation, any costs associated will be handled through the Changes clause, FAR 52.243-1 Alt 1.

B. Does the condition require the physical removal of underground facilities such as a duct bank? The normal method of service is to abandon such facilities in place.

Unknown.

131. Referencing Grant of ROW (Condition 4.5), the condition appears to give the Government the right to sell or transfer facilities (such as poles) that are included in the system inventory and as such the ownership of the same presumably would be transferred to the contractor.

No contractor property can be transferred.

132. Referencing Grant of ROW (Condition 6), the term as written literally requires that the contractor shall maintain the entire premises and not just the portion of the premises where utility facilities are located. Please confirm what is correct.

See definition of premises in the introduction to the ROW.

133. Referencing Grant of ROW (Condition 20), there should be a companion indemnification to hold the Grantee harmless from the actions of the Government.

20.2 of the ROW indicates that the grantee is liable for the results of its actions and states that the grantee is not liable if the Government is grossly negligent. No further indemnification is necessary.

134. Referencing Attachment J49 (Example Easement), please explain the differences in use/application between an easement and a right-of-way.

The easement is for the Army and the right-of-way is for the Air Force and Navy.

A. How will the easement apply for a privatized service?

B. If an easement is applied, will any Section 15 Relocation of services be at the sole expense of the Grantee? It would be difficult to develop a post proposal without resolution of this issue.

See # 130.

135. Kelly AFB recently sold all electric and gas utilities to CPS, including those utility lines in the realigned portion of Kelly AFB which will become part of Lackland AFB. This sale conflicts with Section J.11.1. and Section J12.1. Therefore, the RFP needs to be amended to make it clear that realigned part of Kelly AFB is excluded from the contract. The following paragraph in Sections J.11.1 and J12.1 needs to be deleted:

Recent Base Realignment and Closure (BRAC) actions have transferred several missions from Kelly AFB to Lackland AFB. These include Kelly AFB s flight line and its associated missions and facilities, such as the 433rd Military Airlift Wing, the 149th Air National Guard, and HQ Air Intelligence Agency.

In addition, the reference in Section J.11.3 to the Air Intelligence Agency area needs to be deleted.

Attachments J11 and J12 need to be amended to make it clear that electric and gas facilities serving realigned Kelly AFB is not part of this RFP.

The Government is not offering for sale any system that is already privatized. Section J.11.3 refers to the AIA Medina Annex which is part of Lackland and was not included in the Kelly AFB Privatization. See amendment.

136. J.19.9 provides that the proposed sale and contract covers the Sequin Auxiliary Field, even though it is under a different Certificate of Convenience and Necessity (CCN) than

Randolph AFB is. Is it proper under state law for these two areas under different CCNs to be combined under a single new entity to operate both utility systems?

The contract resulting from this RFP will be governed by Federal law.

137. With regards to section C.4.1, what right does the Government have to authorize the contractor to provide utility services to serve or benefit areas or customers outside the service area(s)? This provision conflicts with Texas utility law.

See #82

138. Since state law requires a CCN to operate a utility, why is it not required to identify the offeror's CCN as part of Section L.4, Statement of Qualifications?

The CCN is required as a matter of Texas law. The RFP and the resultant contract are governed by federal law.

139. Any privatized service contract would necessarily be subject to the review and approval by the Company's Board of Trustees and the City Council. Would a proposal subject to this approval be viewed as nonresponsive?

No. See # 79.

140. Where can we find specific goals for Small Disadvantaged Business?

The Small Business Administration has a web site where the goals are listed. They are also contained Section K of the RFP.

141. When will the tech library be available and will it contain other than just technical information?

See # 59.

142. Renewals and replacements?

The Capital Upgrades and Renewals and Replacements Plan is to provide a detailed description of the initial renewals and replacements and the Contractor's philosophy towards long term capital renewals and upgrades.

143. With the limited number of site visits how can the offerors make an assessment of work that needs to be done over the 50 year period on the systems?

The offerors need to determine necessary information from the site visits and technical library. . If offerors need additional site visits (to see the system, not access to the technical library), please request the visits through DESC.

144. Are maps available?

There are limited maps available on the internet. Technical maps will be in the technical library.

145. Will there be an extension to the proposal due date?

Not at this time.

146. Is the DESC web site equipped with electronic notification? Also, please change the date on the web site when new information is posted.

No. Noted. Also, when offerors hit the web site be sure to hit reload to get the latest information.

147. Sections J-11 and J-12 contain systems already sold to CPS. Please modify these sections. They are not for sale again.

See #135.

148. At Laughlin AFB what is the extent of slip-lining that is anticipated to repair the wastewater and water piping system.

This is up to the offeror.

149. Sheppard AFB and the Fort Worth Naval Air Station (NAS) are currently retail electric utility service customers of TXU's Texas Utilities Electric Company. Their Service Regulation No. 4.7.1.1, Resale of Company's Electric Service, provides as follows:

Customer(s) may not use electric service provided by Company except for the purposes specified in the rate schedules under which Customer receives electric service. Customer may not **resell or otherwise dispose** of electric service unless as provided by statute or as specifically provided for in the rate schedule or Agreement for Electric Service. (emphasis added)

Some entities have determined that the distribution of power within either Base by an entity other than TXU would be a prohibited sale for resale.

a. What will be the consequences if an entity other than TXU acquires one or both of the electric utility systems and it is subsequently determined that there is a prescribed sale for resale? Has DESC considered this possibility?

The Government will remain the customer of record for the purchase of commodity. The owner of the on-base utility system will not buy or resell the commodity.

b. Will this be a factor in the evaluation process? If so, how?

No.

150. Who will be the local utility's customer if a system is privatized to another entity? The Government or the contractor? If the contractor, please provide the basis for this determination.

Government.

151. Please assume that there is a disagreement/dispute between the local utility and one of the installations regarding the post-privatization definition of a "customer" and the application on the sale for resale proscription. Please assume further that the local utility determines that the contractor and not the installation would be our customer and that the distribution of power within the service premise by the contractor is proscribed.

a. Please explain how, given these assumptions, the installation will be assured that it will have access to electric power within the service premise to fulfill its mission requirements.

See c. below.

b. If DESC determines that it is not proper at this time to address these and other regulation-related issues, how and when will they be considered?

See c. below.

c. Conversely, has DESC determined that these issues are not germane? If so, please provide the basis for this determination.

This issue is not germane. The Government is the customer of the commodity supplier. The contract for the commodity will remain between the Government and the commodity supplier. See # 78-80.

152. Article 14.2 of the local utility's GSA Areawide Contract No. GS-00P-98-BSD-0085, provides that:

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the **jurisdiction and regulation of the utility rate commission having jurisdiction.** (emphasis added)

a. Assuming again that there is a dispute between the local utility and one of the installations regarding the post-privatization definition of a “customer” and the application on the sale for resale proscription, please identify the “utility rate commission having jurisdiction.”

Provisions of the GSA areawide contract do not apply to the RFP.

b. If DESC believes that there is no such commission, what is the basis for this determination?

See a.

153. Please assume that the provision of utility service to a base is jurisdictional and subject to applicable contractual (e.g., the GSA Areawide Contract) and regulatory (e.g., PUCT) rules.

a. How will the privatized service contract affect existing upstream service relationships? If there will be no impact (e.g., some have stated, we believe erroneously, that the contractor will merely “step into the shoes” of the Government), what is the basis for this determination?

See #151 c.

b. If there is a conflict between the privatization and GSA contract, which prevails? Does DESC intend that the privatization contract will in any way supercede the GSA Areawide contract?

See # 152, since the GSA areawide does not apply, there is no conflict and no need to supercede.

c. Should an offeror assume that all existing external service arrangements will continue unaffected by the Government’s privatization action? If so, is the intent of DESC to indemnify a contractor if DESC view of the world is inaccurate?

Yes. We do not anticipate that "indemnification" will be required.

154. Referencing Attachment J33 (NAS Service Requirements), Section J33.4 (correctly) states that the Fort Worth Naval Air Station is within TXU’s certificated service territory.

a. Is the existence of or ability to secure a Certificate of Public Convenience and Necessity (CPCN) a contract requirement?

See # 72.

b. How will a requirement for or inability to secure a CCN/CPCN be factored into the Government’s review of a Statement of Qualifications (SOQ)?

CCN/CPCN is not required.

155. Referencing Section M.4.1 (Order of Importance), relatively more weight will be given to the Mission Capability and Proposal Risk evaluation factors. The subfactors all deal with how the work will be performed. There is no consideration whatsoever regarding whether a contractor has the legal ability to provide all or part of the service. For example, it is possible that a state or Federal court may determine that ownership of a gas or electric system by other than the local certificated public utility is subject to the jurisdiction of the Public Utilities Commission of Texas (PUCT) or the Texas Railroad Commission (TRC) or a municipal government, such as the City of San Antonio.

a. While we understand that the DESC/DoD may believe that the contractor and service is not jurisdictional, what if this belief is not the case?

This RFP and resulting contract is subject to Federal Law.

b. Should an offeror address performance risk from this perspective? If so, to what extent and where should the discussion be included? If risk is so addressed, will DESC consider this in its evaluation? If so, how? If not, why not?

No. See #155. a.

c. Does DESC plan to consider regulatory risk on a binary basis? That is, the privatized service will either be jurisdictional or it will not. Or does DESC plan to consider risk on other an absolutist basis? For example, would an offeror (all else being equal) be afforded greater weight if the service could be provided under an existing CPCN? Conversely, how would DESC consider an offeror's statement that the service is not jurisdictional notwithstanding the lack of any definitive State or Federal rulings to support its contentions?

See #155. a. and 78-80.

156. Referencing Section M.4.2.1 (Service Interruption Plan), the clause covers contingencies such as Acts of God. Please define the term "Acts of God."

Singular unexpected and irregular visitation of a force of nature.

a. To the extent an Act of God may be defined as an event beyond the control of a contractor, would an Act of God be the basis for a Section G.3 change in the applicable Section B charges?

Yes.

b. If not, does DESC intend that a contractor must adsorb all associated risks?

c. If so, please reconcile this with the otherwise-applicable proscription on charge adjustments during the first two years of the contract.

An equitable adjustment may be applicable.

157. Referencing Attachment J23 (Sheppard AFB Electric Service), must an offeror have the capability (and legal right) to serve both Sheppard AFB and Frederick Auxiliary Airfield in Frederick, Oklahoma?

a. The two facilities are within different local utility service territories, thereby making it difficult for either installation's local utility to provide service to both. Can an alternate proposal take exception to service to one or the other installation?

Alternate proposals are allowed.

b. If service to both installations is mandatory, what is the basis for this determination?

158. Referencing Attachment J23 (Sheppard AFB Electric Service), Section J23.2.2.1 states that a single utility line can serve the base in the event there is a problem with the second line into the Government-owned transformers. The standard retail method of service is to provide a single line that is adequately sized to meet a customer's needs and to provide service via a second line if necessary to meet capacity requirements.

a. Has DESC contacted the local utility to determine if load switching will be provided at no additional cost if the electric system is owned by another entity?

No.

b. Does DESC believe that there will be no change in the local utility's method of service? If so, what is the basis for this assumption?

Yes.

c. Alternatively, is it relevant for the local utility to address whether existing, informal service arrangements will be maintained if another entity owns the system? How will DESC consider this information?

The Government does not feel that privatizing these systems will have any effect on existing relationships. However, if the utility determines there may be a change, they can notify the Government with an explanation as to why.

159. Please characterize the service contract to be awarded under the RFP.

a. Is it a utility service contract? Is it a FAR Part 41 contract? Does FAR Part 41 apply? Is the Government seeking a utility service?

See # 75.

b. Would (could) a privatized service be implemented under an existing GSA Areawide Contract if the local public utility is the selected contractor?

See # 77.

160. Has DESC made a determination that the provision of privatized electric or natural gas service is subject to the jurisdiction of the applicable regulatory body (e.g., the Public Utility Commission of Texas (PUCT) or the Texas Railroad Commission (TRC))?

See # 78.

- a. If so, what is the basis for this determination for each of the affected utility systems?
- b. If not, what is the basis for this determination for each of the affected utility systems?
- c. If not, please reconcile this determination with the Clause I.5 regulated utility FAR provisions.

161. Referencing Section B.2.5 (Best Value), would a regulated utility providing a regulated service tend to receive a relatively lower technical rating, especially if recognition of its regulated status and consistency with applicable rules, regulations and tariffs necessitated taking exceptions to one or more contract/RFP requirements?

See # 83, 84 and 123.

162. Referencing Section B.5.2.4 (Monthly Credit), the bill credits are for delays in responding to Section C.8 service calls. Does this imply that an offeror could choose to provide the credit in lieu of a timely response? Conversely, if an offeror believed that response times could always be met, would a “zero” credit be acceptable. Please explain the rationale for the clause.

Our intent is to create an incentive for the contractor to meet the required response times. The amount of the credit is up to the offeror.

163. Referencing Section C.2.1 (Qualified Utility Providers), what is the meaning of the word “obligation?” Does it have any meaning other than a requirement to fulfill the terms and conditions of the contract? Alternatively, does the word refer to a regulated public utility’s obligation to provide service to qualifying customers within its certificated service territory?

It means a requirement to fulfill the terms of the contract.

164. Referencing Section C.2.1 (Qualified Utility Providers), the requested service must comply with “applicable” laws and regulations. For a regulated utility, these presumably refer to the body of regulations, ordinances and tariff provisions related to the provision of electric and natural gas service.

a. Please identify the “applicable” laws, regulations and ordinances that would pertain to the provision of electric and natural gas utility service. Would the body of a local utility’s codes, regulations and tariffs apply to an entity other than that utility, even if, for example, one of the installations was (believed to be) an area of exclusive Federal jurisdiction (i.e., an “enclave”)?

See # 16 and 78-80.

b. Assuming that different laws, regulations and tariffs would apply to a local utility and to another entity, this could place the local utility at a competitive disadvantage if utility-applicable provisions were more stringent and as such more costly to implement, at least in the first instance. Will DESC differentiate between different sets of laws, regulations and tariffs in its technical and cost evaluations? If so, how?

Offerors can address this in their proposals. If there are more stringent requirements placed on an entity, this might effect their technical rating and lower the risk rating. The tradeoffs between technical, risk and cost are handled through the best value determination.

c. Does DESC intend to use a standard FAR “order of precedence” clause under which contract terms would override tariff terms? Or vice versa? Please identify the order of precedence clause to be incorporated into the contract.

See # 78-80.

165. Referencing Section C.3.2 (Performance Standards), does the term “industry standard” apply as a more-or-less generic application that refers to the general practices of an industrial sector? If so, the clause may conflict with the provisions of the RFP that relate to the applicability of laws and regulations.

See # 97.

a. Referencing the term “similarly situated utility service customers,” the clause creates a different standard for a local utility (which has other utility service customers) and another entity which may not have other customers and likely would not have similarly-situated customers. A local utility could be placed at a service and pricing disadvantage as compared, for example, to another entity which has no local area presence and which does not operate as a regulated public utility.

b. Does the noted term refer collectively to service within an installation or to the service characteristics for a given building connection? A group of buildings?

c. The contract requires that service practices must be modified as “applicable” Federal, state or local laws/regulations are changed. Please explain what would happen if a Federal law conflicts with non-federal laws/regulations (e.g., city ordinances). Would Federal law take precedence?

166. Referencing Section C.3.5 (Commodity Supply), the clause may violate the terms of a local utility's tariffs related to prohibitions on a sale for resale if the internal utility system is owned by another entity. Has DESC determined whether such a violation would occur? Which party would assume the risk of such a violation? Alternatively, the practical effect of the clause may be to unilaterally modify a local utility's tariff terms. If so, what is DESC's authority to do so?

[See # 102.](#)

167. Referencing Section C.4.1 (Use of Facilities), the clause as written seems to authorize the contractor (even if other than a local utility) to provide a utility service to areas or customers outside of an installation, even if to do so may otherwise be in contravention of state or local law. While others have argued that the Supremacy clause of the U.S. Constitution is a basis for the preemption of any conflicting state or local laws, does DESC intend to extend this preemption to external customers or areas?

[See # 105.](#)

168. Referencing Section C.5.1.3 (Contractor Facilities), utility services can be purchased from the Government.

[See # 109.](#)

- a. For electric and gas service, does this apply to the commodity (which by contract the Government will own) and/or the delivery of power or gas?
- b. How can a delivery service be provided by the Government if a contractor owns the wires and pipes (i.e., delivery facilities)? Does the Government intend to exclude all delivery costs from any negotiated sale price? Would this not violate policies on setting rates for reimbursable/tenant customers?
- c. For a purchase by a contractor there presumably would be a related sale. If so, would this not potentially violate an external utility's resale provisions?

169. Referencing Section L.3.1.4 (Non-Government Advisors), there is objection to CH2M/Hill. This company is or has stated an interest in submitting proposals to provide privatized service. CH2M/Hill is thus a potential competitor. The use of CH2M/Hill also raises at least the perception of bias. For example, it would not be in CH2M/Hill's interest to support the value of regulated service or to contend that a service is regulated in that the company is not a public utility. Because the RFP is a "demonstration" project, it is possible that the processes, results, etc. may be a precedent for actions elsewhere. It is also understood that CH2M/Hill is or is seeking to team with other concerns. This also raises the prospect of at least an appearance of bias or conflict.

[See # 122.](#)

170. Section L.9.2 (General), the section refers to the Section H.4 termination liability. However, Section H.4 is blank. What is the basis for any termination liability?

H.4 was deleted. Termination is handled by clause FAR 52.249-2, Termination for the Convenience of the Government (Fixed-Price) or FAR 52.249-8, Default (Fixed-Price Supply and Service).

171. Referencing Attachment J49 (Example Easement), what is the difference in use/application between an easement and a right-of-way? How will the easement apply to a privatized service? If an easement is used, will any Section 15 relocation of service be at the sole expense of the grantee? It would be difficult to develop a binding cost proposal if this issue is not resolved.

See # 134.

172. Referring to Section C.5.1.4 Record Drawings. What are the latest software applications and version numbers and the type of GIS system used at each installation?

Most bases use the latest version of either Autocad or Microstation.

173. Referring to Section C.5.2.8 Listing of Employees and Subcontractors. Keeping a list of local employees is reasonable, a list of local subcontractors is doable. However, in times of emergency restoration a utility will pull in crews and contractors from across it's system to aid in service restoration. Do you expect to have a list that includes all of the utility personnel and system subcontractors? Would providing the list of local crews and subcontractors be deemed unresponsive?

A list of employees who are involved in normal operations is acceptable. A list of personnel who only support emergencies is not necessary. However, if a specific person or persons is normally responsible for managing emergencies, they should be included in the list.

174. Referring to Section C.8 Routine, Urgent, and Emergency Repair Response. At what point in each request will it be identified as routine, urgent or emergency? Will it be determined mutually or stated by the government at the time of the notification?

Definitions for Routine, Urgent and Emergency are contained in C.8. The person reporting the problem should be able to provide enough information to determine whether the problem is routine, urgent or emergency. If they do not, then it would be up to the contractor to get the information necessary to make a determination.

175. Referring to Section C.8.4 Routine Service Requests. In order to meet a 30 day response to some service requests equipment may need to be purchased that requires a longer than 30 day time period to acquire (i.e. switchgear). In order to best meet the needs of the installation advance notice of utility needs should be communicated as soon as they are known.

Correct.

176. Referring to section C.9.5 Excavation Permits. Provide the excavation permit process for each installation.

Available in the Technical Library.

177. Referring to Section C.9.8 Exercises and Crisis Situations Requiring Utility Support. Define qualified personnel and equipment. What additional type of special equipment will personnel be required to have during these exercises and emergencies?

This type of information will be provided when the contractor is notified of an upcoming exercise. For crisis situations, the contractor would be notified of the type of support necessary and based on that, the contractor should dispatch the correct personnel and equipment.

178. Referring to Section C.10 Environmental Compliance. It states that the contractor shall review and accept all installation procedures related to environmental protection.... Provide all procedures for each installation for review.

Available in the Technical Library.

179. Referring to Section H.6 Rights of the Government to Perform Function with Its Own Personnel. If the Government performs work in time during the periods described, who is in charge of coordinating the work, the government or the contractor? Communication among all personnel is imperative during emergency restoration for the safety of those performing the work and other in the vicinity of the affected facilities.

The Government will contact the contractor prior to invoking H.6 and will coordinate the work with the contractor.

180. Is payment for the system to be established at some agreed upon price by both parties and then that amount will be "credited" against the monthly use billings until the purchase price is exhausted? After that time monthly reimbursements to the utility would be through monthly government checks.

- a. The offeror offers a purchase price through Sub-CLIN 0001.
- b. They also offer payment terms (amortization period and interest rate) to the Government
- c. The offeror proposes the amount of the purchase price they plan to recoup from the Government (Sub-CLIN 0003AA) and the terms. We ask for this separate from other components so that it is visible and not hidden behind other costs like O&M.
- d. Once the purchase price (0001) is fully paid by the new owner and the recovery of the purchase price (0003AA) is fully paid by the Government (end of the amortization periods) both Sub-CLINs will be dropped from the monthly invoices.

181. What is the status on the water rights? Will they be part of the deal?

Water rights will remain with the Government.

182. For Attachment J15, is the secondary portion of the electric distribution system included in the privatization of the system?

The secondary systems are included. The demarcations in the ROW will refer to this.

183. What is the price that Sheppard is paying the city for the "reuse water" it gets from the city for golf course watering?

Not releasable.

184. How much does Sheppard pay to the City of Wichita Falls for Waste Water Treatment, what is the unit price and what is the quantity of sewage treated for the last 2-3 years?

Not releasable.

185. Please reconfirm the "System Deficiencies" section of each base and each system. There appear to be project that are identified as a deficiency that the contractor needs to fund for in the 1st 2 years that have already been funded and contracted for by the base and service. Additionally, there appear to be projects that require funding that are in the 5 year plan that have not been identified in the RFP.

Offerors should only bid on the projects listed in Section J and any additional projects the offeror determines are necessary. Projects that have been funded but have not been initiated will not be completed by the Government. Only projects that are underway will be completed by the Government. Information on other projects that have been taken from the technical library materials (i.e. FYDP, or other forward planning documents) should be considered as "wish lists".

186. Can historical cost data for the operation and maintenance of the electrical distribution and natural gas distribution systems be provided? Does such information exist in the technical library?

Information on work order history for operations and maintenance is available in the technical library. Cost data is not releasable.

187. Can historical cost data for the capital improvements and upgrades to the electrical distribution and natural gas distribution systems be provided? Does such information exist in the technical library?

Information on capital improvements and upgrades history will be available in the technical library. Cost data is not releasable.

188. For Lackland, will there be individual or master electrical metering on the new residential units in the privatized housing areas? Will the successful contractor be required to design, install, maintain, test and/or calibrate this metering?

The new privatized housing will have master meters installed by the Government for water and electrical main distribution systems. The utility services contractor will own, maintain, test, calibrate, and read these meters. In addition to the master meters, privatized housing has meters installed for the leasing office and common areas. These meters are owned by the privatized housing contractor. The utility services contractor will only read these meters and show the results in an itemized meter reading report.

189. What is the current number of positions utilized to operate and maintain the electrical distribution system? Please provide breakdown by job classification (i.e. Supervisors, Lineworkers, Servicemen, Clerical, etc.).

This information is not available.

190. What is the current number of positions utilized to operate and maintain the natural gas distribution system? Please provide breakdown by job classification (i.e. Supervisors, Servicemen, Clerical, etc.).

This information is not available.

191. Are historical records available for electrical loading per circuit? Electrical outages per circuit?

Will be available in the technical library.

192. For Lackland, are capacitors utilized for power factor correction or voltage improvement on the electrical distribution system? What type and sizes are utilized? Are the capacitor banks switched or fixed? Are all the capacitors non-PCB?

Capacitor banks are installed on each of the three circuits incoming into the main base. Capacitor banks are also installed on the other internal circuits in the base. For location, review the utility drawings in the technical library.

193. Is there a formal multi-year capacity plan for the electrical distribution system?

Please clarify the question.

194. Are the Air Intelligence Agency (AIA) area power requirements of Voltage, Availability and Dynamic of Transient Variation metrics noted in Section J11.3 of attachment J11 currently met throughout the installation?

Yes.

195. For Lackland, are there current motor starting limits in place? Is the current system in compliance with these limits?

Yes, the current system is in compliance with the motor starting limits.

196. For Lackland, is the contractor responsible for the control systems associated with the traffic lights?

Yes.

197. For Lackland, what emergency backup is provided for critical loads? Is the operation, testing and maintenance of the backup equipment excluded from the proposal?

Emergency backup systems for the water wells and sanitary lift stations are part of the proposal. This includes the operation, testing, and maintenance of these systems. A list of these emergency backup systems is provided at the technical library. If the equipment is part of the system being transferred, the contractor is responsible for the equipment.

198. For Lackland, are there any PCB or PCB-contaminated transformers or other electrical devices on the installation?

All PCB transformers have been replaced.

199. Can any additional information (i.e. Engineering Designs or Drawings, Preliminary Cost Estimates, Scope of Proposed Projects, etc.) be provided for the Government Recognized System Deficiencies noted in Table 8 of Section J11.11?

Yes, the scope of proposed projects for section J11.11 will be provided in the technical library.

200. Are the required monthly meter readings for kilowatt-hour consumption only or for both kilowatt-hour consumption and kilowatt demand?

Both for kilowatt-hour consumption and kilowatt demand.

201. Has any meter calibration testing been conducted or will such testing be required on the existing and/or future secondary meters noted in Section J11.5?

Yes, meter calibration testing has been conducted and yes, such testing will be required on the existing and/or future secondary meters noted in Section J11.5.

202. Is there currently an inventory of spare equipment for major equipment failures? If so, is that inventory available to the contractor? Is there no emergency inventory, how is the equipment currently acquired to address such failures?

The inventory of spare parts and equipment is shown in the RFP.

203. For Lackland, are any subcontractors currently used to supplement the existing workforce?

Not releasable.

204. For Lackland, are there mutual aid agreements with adjoining distribution system owners to provide emergency assistance in the case of a major system catastrophe?

Yes. There are verbal agreements from both CPS and SAWS to assist in the case of a major catastrophe.

205. Do any continued employment provisions currently in place for existing employees bind contractor?

No. See clause FAR 52.207-3, Right of First Refusal of Employment.

206. If contractor determines that fewer employees are needed to provide continued operations, does the contractor determine which employees are retained?

It is the contractor's responsibility to determine which, if any, are hired for its operations.

207. Should contractor at a later date define a need to increase staffing levels, do former employees retain any employment rights? If so, for how long?

No.

208. Are all current employees fully qualified to perform their current job assignments?

It is up to the contractor to determine qualifications of employees.

209. Although not listed in Attachment J11, will the contractor have the ability to offer to acquire the equipment and tools used in daily operations or will the contractor need to provide all equipment to continue operations?

Offers for acquisition of Government equipment should be based on information in the Section J attachments. If additional equipment becomes available, the applicable attachments will be amended accordingly. The contractor is responsible for providing all necessary equipment.

210. What party owns the service line that delivers gas to an individual building or meter (main to meter or main to building if there is no meter)?

Points of demarcation are defined in the ROW.

211. Is contractor responsible for leak repairs beyond the meter or inside of any building if there is no meter?

The contractor is responsible for the system up to the point of demarcation defined in the ROW.

212. Is contractor required to investigate leakage or fumes complaints inside buildings?

See # 211. They may have to investigate inside buildings if necessary to determine if leak is inside or outside the building.

213. Is the contractor involved in the repair, maintenance on or adjustment of any gas burning equipment, boilers and/or appliances?

No.

214. Are there specific procedures in place for red-tagging (shutdown of unsafe equipment) and subsequent safety inspections once repairs have been effected?

If the equipment is part of the system being transferred, the contractor is responsible for proposing procedures.

215. Is contractor responsible for meter accuracy, proving and testing?

Yes, see section C.3.3.

216. Is there a timetable for the installation of new secondary meters?

See section C.13.4.2.

217. For Lackland, based on the RFP, City Public Service is the main feed to the system. Under what conditions can the PG&E – Valero feed be utilized?

This feed is mainly for supporting the TEP. However, there is a tap into this line. In case of emergency, the feed can be utilized to supply natural gas to the base.

218. Is the contractor responsible for the failure of either supplier to deliver gas of sufficient quantity, quality or pressure to adequately operate the system?

If the failure is due to the commodity supplier, the system owner is not responsible.

219. Who is responsible for the installation of new service lines or upgrading existing lines when new structures are built or existing structures are modified?

The owner of the system is responsible, see section C.11.

220. For Lackland, what is the percentage of lost and unaccounted for gas for the previous five years?

Information is not available.

221. For Lackland, how many outstanding leaks by classification?

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|----------|------|------|------|------|------|
| Class 1 | 5 | 60 | 4 | 5 | 13 |
| Repaired | 5 | 60 | 4 | 5 | 13 |
| Class 2 | 17 | 28 | 16 | 4 | 16 |
| Repaired | 17 | 27 | 16 | 4 | 16 |
| Class 3 | 83 | 361 | 35 | 173 | 148 |
| Repaired | 70 | 257 | 29 | 120 | 101 |

222. For Lackland, how many leaks were repaired per year over the last five years?

See # 220.

223. For Lackland, is there a computerized leak information system?

No.

224. What are the current and historic employment levels (five year total request)?

Not releasable.

225. Is the use of contractors prevalent?

This varies from base to base and system to system.

226. What are the historic O&M costs over the last five years?

Not releasable. See # 185.

227. Is there any operational significance to the Lackland Total Energy Plant (TEP)?

There is no operational significance. It is not relevant for this RFP.

228. For Lackland, how many water softening facilities are located on the base and will the successful bidder be responsible for the operation and maintenance of those facilities?

All water softening systems are not included in this RFP.

ATTACHMENT 2
THE ROLE OF STATE LAWS AND REGULATIONS IN UTILITY PRIVATIZATION



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MEMORANDUM FOR GENERAL COUNSEL OF THE ARMY
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SUBJECT: The Role of State Laws and Regulations in Utility Privatization

Section 2688 of title 10, United States Code, provides permanent authority to the Military Departments to convey certain listed types of utility systems to a utility company or other entity. As consideration for the conveyance, the Secretary shall receive fair market value, in the form of a lump sum payment or a reduction in charges for utility services provided by the utility or entity. The department commonly refers to the process of conveying the utility system to a non-Federal entity and concurrently contracting for services from the new owner, as privatization of that utility system. As we explore the role of state laws and regulations in utility privatization, we must be acutely aware of these two distinct and yet interrelated components, because the extent to which state laws and regulations are applicable to privatization varies depending on which component of privatization is at issue. Consequently, this memorandum addresses two questions: (1) Do state laws and regulations apply to the conveyance of an on-base utility system under section 2688 of title 10, United States Code?; and (2) Do state laws and regulations apply to or otherwise affect the Federal government's acquisition of utility services related to an on base utility system conveyed under section 2688 of title 10, United States Code? As discussed more fully below, the answer to this second question is different for the commodity electricity than for electric utility services, and for other types of utilities.

I. DO STATE LAWS AND REGULATIONS APPLY TO THE CONVEYANCE OF AN ON-BASE UTILITY SYSTEM UNDER SECTION 2688 OF TITLE 10, UNITED STATES CODE?

It is a longstanding Constitutional principle that the states may not regulate the Federal government except to the extent that the Constitution so provides or the Congress consents to such regulation, McCulloch v. Maryland, 17 U.S. 316 (1819). For Congress to consent to such regulation, it must waive the sovereign immunity of the United States. A waiver of sovereign immunity must be unequivocal. See, e.g., United States Department of Energy v. Ohio, 503 U.S. 607 (1992) ("(t)his Court presumes congressional familiarity with the common rule that any waiver of the Government's sovereign immunity must be unequivocal. Such waivers must be construed strictly in favor of the sovereign and not enlarged beyond what the language requires." Citation



omitted). In Hancock v. Train, 426 U.S. 167 (1976), the Supreme Court discussed Federal supremacy at length particularly as it relates to Federal installations:

It is a seminal principle of our law "that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them." From this principle is deduced the corollary that "[it] is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence." *Id.*, at 427.

The effect of this corollary, which derives from the Supremacy Clause and is exemplified in the Plenary Powers Clause giving Congress exclusive legislative authority over Federal enclaves purchased with the consent of a State, is "that the activities of the Federal Government are free from regulation by any state."

* * *

Taken with the "old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign" "without a clear expression or implication to that effect," this immunity means that where "Congress does not affirmatively declare its instrumentalities or property subject to regulation," "the federal function must be left free" of regulation. Particular deference should be accorded that "old and well-known rule" where, as here, the rights and privileges of the Federal Government at stake not only find their origin in the Constitution, but are to be divested in favor of and subjected to regulation by a subordinate sovereign. Because of the fundamental importance of the principles shielding Federal installations and activities from regulation by the States, an authorization of state regulation is found only when and to the extent there is "a clear congressional mandate," "specific congressional action" that makes this authorization of state regulation "clear and unambiguous."

426 U.S. at 178 (citations omitted).

The authority to convey an on-base utility system, granted by Section 2688, is in furtherance of the Congress' authority under Article IV, Section 3, of the Constitution "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; ...". Consequently, in this instance, the "rights and privileges of the Federal Government at stake ... find their origin in the Constitution", specifically, the property clause of Article IV, Section 3.

Through Section 2688 Congress granted to the military departments the authority to convey its utility systems. Regardless of the jurisdictional/enclave status of the installation, the disposal of Federal property is a Federal action which may not be restricted by the state, absent an explicit waiver of Federal sovereignty. Consequently, if Congress were to waive the sovereign immunity of the United States with respect to the

conveyance of an on-base utility system, it is likely it would do so, if at all, in Section 2688. Section 2688 refers to state regulation in its subsection (c)(2)—

(c) Consideration.—(1) The Secretary concerned shall require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of—

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

Paragraph (2), by its own language, only applies when the consideration for the purchase of the on-base utility system is a reduction in charges, as opposed to a lump sum payment, and then only to the rate charged for the utility services. Consequently, if the sale is for a lump sum payment, there is no waiver of sovereign immunity under 10 U.S.C. § 2688. Furthermore, if the consideration for the sale is a reduction in charges, there is a waiver of sovereign immunity, but the waiver is limited to regulation of the rate charged for the utility services. There is nothing in Section 2688 that can be interpreted as a waiver of the Government's sovereign immunity from state or local regulation with respect to the conveyance of the on-base utility system. To the contrary, Section 2688 specifically indicates the manner by which the government may convey the on-base utility system: "[i]f more than one utility or entity . . . notifies the Secretary concerned of an interest in a conveyance . . . the Secretary shall carry out the conveyance through the use of competitive procedures." 10 U.S.C. 2688(b).

In addition to section 2688, there is, for electricity, a special statutory provision contained in the Department of Defense Appropriations Act, 1988, Public Law 100-202, that bears on the question of whether Congress has waived the sovereign immunity of the United States—

Sec. 8093. None of the funds appropriated or made available by this or any other Act with respect to any fiscal year may be used by any Department, agency, or instrumentality of the United States to purchase electricity in a manner inconsistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements: Provided, That nothing in this section shall preclude the head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287; nor shall it preclude the Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 or from purchasing electricity from

any provider when the utility or utilities having applicable State-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

As will be discussed in more detail later, this provision waives the sovereign immunity of the United States with respect to the acquisition of the electricity commodity. However, nothing in this provision can be construed as waiving the sovereign immunity of the United States with respect to the disposal of an on-base utility system.

Because Congress has not waived the sovereign immunity of the United States with respect to the conveyance of an on-base utility system under section 2688 of title 10, United States Code, state law is not applicable to the conveyance of an on-base utility system under Section 2688; rather, Section 2688 governs that conveyance. Accordingly, "[i]f more than one utility or entity . . . notifies the Secretary concerned of an interest in a conveyance . . . , the Secretary shall carry out the conveyance through the use of competitive procedures", not on a sole source basis to a utility that state law indicates has an exclusive right to provide utility service in the relevant geographic area.

Section 2688 also provides that the Secretary concerned may not make a conveyance of a utility system until he submits an analysis demonstrating, *inter alia*, that "the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned . . ." Whether this economic standard is met – and whether conveyance of the utility is permissible under section 2688 – can be substantially affected by whether state laws and regulations apply to the Federal Government's acquisition of utility services from the prospective new owner of the utility system. We now turn to address that question.

II. DO STATE LAWS AND REGULATIONS APPLY TO OR OTHERWISE AFFECT THE FEDERAL GOVERNMENT'S ACQUISITION OF UTILITY SERVICES RELATED TO AN ON-BASE UTILITY SYSTEM CONVEYED UNDER SECTION 2688 OF TITLE 10, UNITED STATES CODE?

A. CAN THE STATES REGULATE THE FEDERAL GOVERNMENT'S ACQUISITION OF UTILITY SERVICES?

For the reasons discussed in the previous section, the states may not regulate the Federal government in any respect absent an unequivocal waiver of sovereign immunity. With one exception discussed below with respect to acquisition of the electricity commodity, there has been no such waiver with respect to Federal acquisition of utility services, hence states may not regulate these transactions directly.

Some have argued that through Section 8093 of the Department of Defense Appropriations Act, 1988, Congress may have waived the sovereign immunity of the United States with respect to the acquisition of electric utility services. As indicated previously, Section 8093 provides that

[n]one of the funds appropriated or made available by this or any other Act with respect to any fiscal year may be used by any Department, agency, or instrumentality of the United States to purchase electricity in a manner inconsistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

A plain reading of Section 8093's operative statutory language ("...to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service...") necessarily leads to the conclusion that the waiver of sovereign immunity in that section is limited to purchase of the electric commodity (electric power) excluding distribution or transmission services.¹ There is nothing in this section to indicate that "purchase electricity" should be read in any way other than its plain language. Consequently, electricity does not include the provision of utility services other than the commodity itself. This reading of section 8093 is also buttressed by the rule of statutory construction that waivers of sovereign immunity should be narrowly construed. See, e.g., United States Department of Energy v. Ohio, 503 U.S. 607 (1992) ("(t)his Court presumes congressional familiarity with the common rule that any waiver of the Government's sovereign immunity must be unequivocal. Such waivers must be construed strictly in favor of the sovereign and not enlarged beyond what the language requires.").

¹ In West River Elec. Assn., Inc. v. Black Hills Power & Light Co., 918 F.2d 713 (8th Cir. 1990), the United States Court of Appeals for the Eighth Circuit considered the application of section 8093 to the purchase of electricity at Ellsworth AFB. The court concluded that—

...Congress, through section 8093, has not provided the necessary clear authorization to defer its exclusive jurisdiction over Ellsworth and to apply in its stead the South Dakota utility service territories as established under South Dakota law.

Nor are we able to find in section 8093, on its face or in relation to the Appropriations Act as a whole, or from the legislative history, any clear and unambiguous declaration by Congress to amend the extensive and carefully-crafted body of federal procurement law. In fact, nowhere in section 8093 or its legislative history is the *Competition in Contracting Act* mentioned. Furthermore, as previously noted, the legislative history clearly states that this legislation was intended to protect against utility abandonment by their federal customers. It is undisputed that no abandonment is occurring here.

918 F.2d at 719. If the Department were to apply the holding of this case to all its privatization actions on installations with exclusive Federal legislative jurisdiction, the applicability of section 8093 would be limited to an even greater degree than suggested by this memorandum.

Furthermore, the legislative history indicates that the "provision is intended to protect remaining customers of utility systems from the higher rates that inevitably would result if a Federal customer were allowed to leave local utility systems to obtain retail electric utility service from a nonlocal supplier." Senate Report 100-235, Report of the Committee on Appropriations accompanying S. 1923, the Department of Defense Appropriations Bill, 1988, page 70. There is nothing about the disposal of a government constructed and owned utility distribution system, and the subsequent acquisition of services from that system, that in any way undermines the stated purpose of section 8093.

However, because section 8093 waives the sovereign immunity of the United States with respect to the purchase of the electricity commodity, whether we could purchase or obtain electricity from a generating facility the Department has transferred through section 2688 is dependent upon state law.

B. CAN THE STATES REGULATE PROVIDERS OF UTILITY SERVICES TO THE FEDERAL GOVERNMENT?

While states generally recognize that they cannot regulate Federal contracting functions directly, some states have tried to regulate Federal contractors. Using this device, states sometimes attempt to accomplish indirectly what they could not achieve through direct oversight over activities of the Federal Government. The result is often a conflict between Federal regulations affecting Federal purchases and state regulation of providers of goods and services in its territory. Typically states will require a provider of a particular service or item of supply to be licensed while Federal contracting rules do not require the vendor to obtain a state license.

Conflicts between state and Federal laws are resolved through the Supremacy Clause of the Constitution: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Article VI, clause 2. Where there are direct conflicts between state and Federal law, state law must give way. The answer is less clear-cut where state and Federal laws do not directly conflict but where state laws affect Federal policies and programs to a greater or lesser degree. The Supreme Court has explained the rules for resolving conflicts between state and Federal law as follows:

In determining whether a state statute is pre-empted by federal law and therefore invalid under the Supremacy Clause of the Constitution, our sole task is to ascertain the intent of Congress. See Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 95 (1983); Malone v. White Motor Corp., 435 U.S. 497, 504 (1978). Federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. E. g., Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Second, congressional intent to pre-empt state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.

Elevator Rice v. Santa Fe Corp., 331 U.S. 218, 230 (1947). . . . As a third alternative, in those areas where Congress has not completely displaced state regulation, federal law may nonetheless pre-empt state law to the extent it actually conflicts with federal law. Such a conflict occurs either because "compliance with both federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143 (1963), or because the state law stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941). See Michigan Canners & Freezers Assn., Inc. v. Agricultural Marketing and Bargaining Bd., 467 U.S. 461, 478 (1984); Fidelity Federal Savings & Loan Assn. v. De la Cuesta, 458 U.S. 141, 156 (1982). Nevertheless, pre-emption is not to be lightly presumed. See Maryland v. Louisiana, 451 U.S. 725, 746 (1981).

California Fed. Savings & Loan Association v. Guerra, 479 U.S. 272, 284 (1987).

In the Federal contracting arena it appears that the second prong of the Guerra Supremacy Clause analysis applies. That is, the Federal Government has "occupied the field" of rules and standards applying to federal procurement and left no space for state intervention. In Miller v. Arkansas 352 U.S. 187 (1956) the state attempted to prosecute a Federal contractor for not obtaining a contractor's license. The Supreme Court held that the Federal regulations establish methods for ensuring the responsibility of Federal contractors and that the states' attempt to insert themselves in this process violated the Supremacy clause. Many other cases since Miller have reaffirmed that the states may not require licensing of Federal contractors. The justification that regulation is intended to exclude bad contractors duplicates the Federal Government's own contractor selection procedures and is deemed an unwarranted interference with this Federal function. United States v. Virginia, 139 F.3d 984 (1998). Based on these precedents, state attempts to require that Federal utility service contractors operating a utility system on the installation obtain a state license to "ensure the Government gets quality service", should certainly fail.

States may justify regulation of a utility contractor on other grounds e.g. safety and health considerations affecting the broader utility distribution framework. This requires a different Supremacy Clause analysis since it is not the case that Congress has "left no room" for state regulation to ensure safe and economical operation of intrastate utility distribution systems. On the contrary, such regulation occurs in every state. Given potentially inconsistent Federal and state regulations each addressing legitimate concerns, a balancing test is required. United States v. Town of Windsor 765 F.2d 16, 19 (2d Cir. 1985) ("application of the Supremacy Clause requires a balancing of the state and local interest in enforcing their regulations against the Government's interest in opposing the regulation."); United States v. Philadelphia 798 F.2d 81, 87 (3d Cir. 1986) ("a mere conflict of words is not sufficient; the question remains whether the consequences [of state regulation]....sufficiently injure the objectives of the federal program to require non recognition." citing McCarty v. McCarty, 453 U.S. 210, 232 (1981).

Using the balancing test, courts have found that a state building code is inapplicable to a Federal project, concluding that "[e]nforcement of the substance of the permit requirement against the contractors would have the same effect as direct enforcement against the Government." 765 F.2d at 19; and invalidated a state statute that prohibited carriers from transporting government property at rates other than those approved by a state commission because it was a prohibition against the Federal government and clearly in conflict with Federal policy on negotiated rates. Public Utilities Commission of California v. United States, 355 U.S. 534 (1958). On the other hand, in North Dakota v. United States, 495 U.S. 423 (1990), the Court held that state liquor reporting and labeling requirements imposed on contractors who sell liquor to the Federal government were not invalid because they did not regulate the Federal government directly, were not discriminatory, and did not impose a significant burden on the Federal government or conflict with a Federal system of regulations. Similarly, where the application of the state regulation required the contractor to comply with certain work safety rules, the Court found the impact on the Federal government's interest incidental and concluded that the rules were valid as applied against the contractor. James Stewart & Company v. Sadrakula, 309 U.S. 94 (1940).

In applying a balancing test, the Courts would be required to balance Federal policies favoring maximum possible competition in government contracting against whatever safety or other regulatory concerns the states could articulate. It would seem clear from the case law that the state could not impose a license requirement because that could operate to overturn the Federal selection of a contractor using competitive procedures. Miller v. Arkansas 352 U.S. 187 (1956); United States v. Virginia, 139 F.3d 984 (1998). However, the state may well regulate the operation of that contractor in a non-discriminatory way to protect the health and safety of all its citizens as long as that regulation does not impose a significant burden on the Federal government or conflict with a Federal system of regulation. North Dakota v. United States, 495 U.S. 423 (1990). Some degree of state regulation of the contractor operating a utility system on the installation may be permissible, to ensure, for example, that the operation of the on-base system does not threaten the safety and reliability of any utility system to which the on-base system connects.

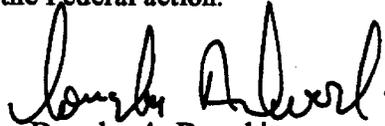
III. CONCLUSIONS AND RECOMMENDATIONS.

When the Department disposes of an on-base utility system, and more than one entity expresses an interest in the conveyance, the Department must dispose of the utility systems "using competitive procedures" notwithstanding state laws and regulations regarding who can own a utility system. Congress has not waived the sovereign immunity of the United States with respect to disposal. Any effort to dispose of the system in a non-competitive manner, when more than one entity expresses an interest in the conveyance, even if undertaken to voluntarily comply with state law, would violate the express terms of section 2688.

Additionally, the state may not regulate the Federal Government's acquisition of utility services related to the on-base utility system. Federal procurement laws and

regulations are supreme in this area. The Department must comply with state laws and regulations only when it is acquiring the electricity commodity.

Finally, while the entity to whom the Department conveyed the on-base utility system is not required to submit to state licensing or similar requirements that undermine the Federal competitive selection of that entity, to the extent the state has regulations regarding the conduct of operation and ownership of utility systems, the entity may have to comply with those requirements if those state requirements do not impose a significant burden on the Federal Government, conflict with a Federal system of regulation, or undermine the Federal policy being implemented. This will require a careful analysis of particular state requirements in relation to the Federal action.



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