**Facilities Engineering** 

# Acquisition and Sale of Utilities Services

Headquarters
Department of the Army
Washington, DC
3 March 2015

## SUMMARY of CHANGE

AR 420-41 Acquisition and Sale of Utilities Services

This major revision, dated 3 March 2015--

- o Updates the activities exempted from this regulation's provisions (para 1-5).
- o Updates responsibilities for the acquisition of utilities services, and the sale of utilities and related services, to conform to Department of the Army Installation Management Transformation (chap 2).
- o Updates general Army policies for acquiring and selling utilities and services (paras 3-1 and 4-1).
- o Incorporates energy-related statutes and executive-order requirements related to the purchase of utility services from renewable energy; demand response pricing; and environmental concerns (para 3-1 and tables 3-1 through 3-4).
- o Provides guidance on purchasing Federal power, acquisition in foreign countries, Department of Defense competitive utility supply programs, contracts, technical requirements, and security mandates (para 3-2).
- o Identifies considerations for acquiring utilities services from renewable resources projects through power of energy purchase agreements (para 3-3).
- o Updates approval threshold levels for acquisition contracts, and adds guidance on waivers or deviations from service-related regulations and guidance (para 3-4, table 3-5, and table 3-6).
- o Provides guidance on preparing, executing, and administering solicitations and contracts for acquiring utility services (paras 3-5, 3-6, and 3-8).
- o Provides quidance on metering owned by the utility supplier (para 3-7).
- o Provides guidance on acquisition utility contract rate changes (para 3-9).
- o Establishes the Army Utilities Services Acquisition and Sale Specialist Training and Certification Program (paras 3-11 and 4-17).
- o Updates the precondition for considering a sale, establishes considerations for the off-post sale to non-Federal customers, and provides guidance on the sale of utilities and related services in foreign countries (para 4-2).
- o Removes the reproducible utilities-sale-instrument formats from the regulation and prescribes additional special-provision forms for hot water service, fuel oil service, compressed air service, ice service, chilled water service, and liquefied propane gas service (paras 4-2d, 4-12, B-1, and B-2).

- o Provides guidance on the sale of electricity from alternate energy and cogeneration production facilities (para 4-3).
- o Provides guidance on crediting sales proceeds (para 4-4).
- o Changes the terms "purchaser(s)" and "tenant(s)" to "customer(s)" and expands the customer classes on the sales of utilities and related services (paras 4-6, 4-8, and figure 4-1).
- o Updates utilities-sale-instrument approval threshold levels, and adds guidance on waivers or deviations from sale-related regulations and guidance (para 4-7, table 4-1, and table 4-2).
- o Updates and expands the unit cost rates for the sales of utilities and related services for each customer class (para 4-8 and fig 4-1).
- o Provides guidance on the sale of utilities, and related, services from garrisons using working capital funds (para 4-9).
- o Provides guidance on recovering incremental costs associated with privatizing an Army utility system and recovering energy savings performance contracting costs, or utility energy services contracting costs, directly related to a Government-owned utility generation and/or utility external infrastructure (para 4-10).
- o Provides guidance on using utility sale meters (para 4-11).
- o Provides guidance on preparing, administering, modifying, and terminating instruments used for selling utilities and related services (paras 4-12 through 4-14).
- o Provides guidance on sales disputes and debt collection (paras 4-15 and 4-16).
- o Establishes internal control evaluation test questions (paras C-4 and C-5).

Effective 3 April 2015

### **Facilities Engineering**

### Acquisition and Sale of Utilities Services

By Order of the Secretary of the Army:

RAYMOND T. ODIERNO General, United States Army Chief of Staff

Official:

GERALD B. O'KEEFE

Administrative Assistant to the

Secretary of the Army

**History.** This publication is a major revision

**Summary.** This regulation has been revised to update the policy, responsibilities, and mandatory procedures for the acquisition and sale of utilities and related services. It covers policies, responsibilities, and procedures for the preparation, review, approval, award, and post-award administration of solicitations and contracts for the acquisition of utilities services: and contracts, memorandums of understanding, inter-service or intragovernmental support agreements for the sale of utilities and related services. The sections pertaining to the acquisition of utilities services are to be used with the Federal Acquisition Regulation system and implement electricity procurement requirements of the Energy Policy Act of 2005, Executive Order 13423, Executive Order 13514, Department of Defense Instruction 4170. 11, and the Department of Defense 4140. 25-M chapters pertaining to the competitive acquisition of electricity and natural gas. The sections pertaining to the sale of utilities and related services implement Section 2686, Title 10, United States Code; Section 2872a, Title 10, United States Code; Section 2916, Title 10, United States Code; Section 1535, Title 31, United States Code; Department of Defense 7000.14–R; Department of Defense instruction 4000.19; Department of Defense Instruction 1015.15; AR 37–49, AR 215–1; AR 215–8, AR 420–1; the Army Reimbursable Policy; and the Army Residential Communities Initiative Utilities Reimbursement Policy.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to installations, sites, and/or facilities operated and maintained by Federal funds. Also, applies to facilities under Department of the Army control purchasing utility services needed for Army consumption, and selling utilities and related services to reimbursable customers as permitted by law.

Proponent and exception authority. The proponent of this regulation is the Chief of Engineers. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the

commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix C).

**Supplementation.** Supplementation of this regulation and the establishment of command and local forms are prohibited without prior approval from the U.S. Army Corps of Engineers (CEMP–CI–I), 441 G Street N.W., Washington, DC 20314–1000.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the U.S. Army Corps of Engineers (CEMP-CI-I), 441 G Street N.W., Washington, DC 20314–1000.

**Distribution.** This publication is available in electronic media only and is intended for command levels C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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<sup>\*</sup>This regulation supersedes AR 420-41, dated 15 September 1990.

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### Glossary

### Chapter 1 General

### 1–1. Purpose

This regulation establishes Department of the Army (DA) policies, responsibilities, and mandatory procedures for the acquisition of utilities services (regulated and unregulated) and the sale of utilities and related services pursuant to Federal, Department of Defense (DOD), and DA policies and regulations. It applies to the acquisition and sale of utilities and related services at an Army garrison, depot, plant, or facility (hereafter referred to as garrison). Its intent is the acquisition of life cycle cost-effective utility services, commensurate with the garrison's requirements and the sale of utilities and related services in support of the garrison reimbursable customers (formerly referred as "tenants" or "purchasers").

### 1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

### 1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

### 1-4. Responsibilities

Responsibilities are listed in chapter 2.

### 1-5. Exclusions

The following activities are exempt from the provisions of this regulation, unless stated otherwise in other applicable regulations or herein:

- a. Outside continental United States (OCONUS) contingency or expeditionary operations.
- b. The Army National Guard (ARNG) under the control of individual States or Territories; this regulation, however, does apply to the sale of utilities and related services by the Army to the ARNG.
- c. Government-owned contractor-operated facilities where contract provisions allow Government-owned contractor-owned facilities to procure their own utilities and related services.
  - d. Civil works facilities of the U.S. Army Corps of Engineers (USACE) (provisions in para 3-9 will apply).

### Chapter 2 Responsibilities

### 2-1. Assistant Secretary of the Army (Acquisition, Logistics and Technology)

The ASA (ALT) serves as the Army Acquisition Executive and the Senior Procurement Executive on matters pertaining to contracting for the acquisition of utilities services and sale of utilities and related services. The ASA (ALT) is solely responsible for the utilities procurement function within the Army Secretariat and the Army Staff (ARSTAF), including all DA matters and development, strategic guidance, and supervision of policy, related to the acquisition, logistics, and procurement. The ASA (ALT) is also responsible for exercising the utilities procurement and contracting functions, including the authorities of the agency head for contracting, procurement, and acquisition matters pursuant to laws and regulations; delegating utilities acquisition contracting authority; managing the Army Competition Advocate Program; and designating utilities acquisition contracting activities. The ASA (ALT) is responsible for representing DA on the Defense Acquisition Board and providing Army policy representatives to the Defense Acquisition Regulations Council. See Department of the Army General Order (DA GO) 2012–01 for a description of functions and responsibilities assigned to the ASA (ALT).

### 2-2. Assistant Secretary of the Army (Installations, Energy and Environment)

The ASA (IE&E) has the principal responsibility for all DA matters related to installations, energy, real estate, environment, safety, and occupational health. The ASA (IE&E) is responsible for providing strategic guidance and supervision of DA policy, programming, funding, advocacy, strategic program direction, and oversight of garrison facilities and family housing programs to include installation energy security and operational energy; and the real property acquisition, operation, maintenance, repair, improvements, design, construction, management, disposal, condemnation, supervision and implementation of privatization initiatives, and security of Army-owned utilities infrastructure. See DA GO 2012–01 for a description of functions and responsibilities assigned to the ASA (IE&E).

### 2-3. Assistant Secretary of the Army (Financial Management and Comptroller)

The ASA (FM&C) has the principal responsibility for exercising the Army's financial management functions, including the comptroller functions, related to the acquisition of utilities services and sale of utilities and related services. The

ASA (FM&C) is responsible for all financial management activities and operations for appropriated funds (APF); financial management oversight of nonappropriated funds (NAFs); establishing Army finance and accounting policies, practices, and procedures; financial oversight of security assistance programs; and for advising the Secretary of the Army on financial management issues related to the acquisition of utilities services and sale of utilities and related services. See DA GO 2012–01 for a description of functions and responsibilities assigned to ASA (FM&C).

### 2-4. Chief of Engineers

a. The COE has ARSTAF responsibilities for the Army Commercial Utilities Program (also known as the Army Power Procurement Program, Utilities Contracting Program, or the Acquisition and Sales of Utilities Services Program). The COE is the Army Power Procurement Officer (APPO) exercising authority delegated by the ASA (ALT). In this capacity, the COE is responsible for administering the purchase and sale of utilities services, and for policies, engineering, rates, and legal sufficiency related to all utilities services transactions and contracts in which the Army has a monetary interest. Regarding the acquisition of utilities services, the COE may enter into contracts for utilities services for a term of up to 10 years or longer if authorized by law, regulations, and/or the General Services Administration's (GSA's) delegated authority, as applicable. The COE may redelegate this authority as deemed necessary for the efficient acquisition of utilities services. Regarding the sale of utilities and related services, the COE may also delegate authority for the same by Army activities. See DAGO 2012–01 for general ARSTAF responsibilities of the COE and the Army Federal Acquisition Regulation Supplement 5141 for a description of specific functions and responsibilities assigned to the COE related to the acquisition and sale of utilities services.

b. Also serves as Commander, USACE.

### 2-5. Assistant Chief of Staff for Installation Management

The ACSIM has ARSTAF responsibilities for matters pertaining to the management of Army garrisons. The ACSIM is responsible for developing policy, resourcing, programming, and directing execution of garrison management matters to include utilities privatization, energy and water management, energy security, and utilities modernization programs among others. Specific ARSTAF responsibilities of the ACSIM in these matters are stated in DA GO 2012–01 and AR 420–1. The ACSIM will assist the COE and the Deputy Army Power Procurement Officer (DAPPO) with the ARSTAF administrative oversight for the acquisition of utilities services and sale of utilities and related services (see para 2–4*a*). This assistance includes the oversight of the preparation, technical rates selection, negotiation, and award of contracts, MOUs, and inter-service or intragovernmental support agreements.

### 2-6. Commanders of Army landholding commands

Commanders of Army landholding commands will-

- a. Assist the DAPPO and Assistant Deputy Army Power Procurement Officer (ADAPPO), in the field, with administrative oversight of the preparation, technical rates selection, negotiation, and award of contracts, memorandum of understandings (MOUs), inter-service, or intragovernmental support agreements for the acquisition of utilities services and the sale of utilities and related services.
- b. Appoint in writing an Army command (ACOM), Army service component command (ASCC), or direct reporting unit (DRU) utility services officer (UtilSO), as applicable—with an engineering or utilities technical background, experience in utilities rate analysis, and experience in negotiations with utility companies—to assist major subordinate commands' and garrisons' UtilSOs under their purview, in transactions related to the acquisition of utilities services and the sale of utilities and related services.
- c. As deemed appropriate, appoint in writing UtilSOs at major subordinate commands and garrisons with engineering or utilities technical background, experience in utilities rate analysis, and experience in negotiations with utility companies to assist contracting officers and the Director of Resource Management in transactions related to the acquisition of utilities services and the sale of utilities and related services, as applicable.
- d. Provide implementation guidance to the ACOM, ASCC, or DRU under their command that promotes, enhances, and enables successful execution of utilities acquisition and sales-related initiatives.
  - e. Ensure that delegated authorities and implementation guidance address—
- (1) Assistance to the DAPPO and the ADAPPO, in the field, with administrative oversight of the preparation, technical rates selection, negotiation, and award of contracts, MOUs, inter-service, and intragovernmental support agreements for the acquisition of utilities services and the sale of utilities and related services.
  - (2) Compliance with—
- (a) Federal Acquisition Regulation (FAR) Part 41, its supplements, and this regulation, pertaining to the acquisition of utilities services for Army garrisons under their purview.
- (b) Utility acquisition terms and conditions contained in the status of forces agreement or similar applicable agreements (such as a Defense Cooperation Agreement) of the applicable host nation for Army garrisons and communities under their purview, located OCONUS.
- (c) DOD and Army reimbursement policies, and this regulation, pertaining to the sale of utilities and related services.

- (3) Review, coordination, and assistance on proposed acquisition of utilities services and sale of utilities and related services that require approval from the ADAPPO, DAPPO, APPO (COE), or higher-level authorities, as per paragraphs 3–4 and 4–7.
- (4) Maintain liaison with State, municipal, and other applicable regulatory bodies responsible for regulating utilities; and maintain familiarity with prescribed policies, procedures, and utility or supplier rate case filings affecting garrisons under their purview.
- (5) Assistance to the ADAPPO in performing the Army's services' utilities management officer (SUMO) responsibilities, under the DOD (noncentralized) electricity program.
- (6) Working together with the resource management officer (RMO) to determine the utility services' acquisition-funding budgetary requirements, to meet the needs of the garrison under their purview.
- (7) Coordination with other garrisons' Director of Public Works programs that impact, or are impacted by, the acquisition and sale of utilities and related services.
- (8) Coordination of the acquisition of utilities services and sale of utilities and related services with, and provide technical support to, the contracting officer and the RMO, as applicable.
- (9) Preparation of technical supporting data pertaining to the acquisition of utilities services and their administration as required by this regulation and the FAR System.
- (10) Preparation of technical supporting data pertaining to the sale of utilities and related services and their administration as required by this regulation, as well as DOD and Army reimbursement policies and guidance.
- (11) Participation in technical and rates negotiations and in discussions supporting the contracting officer and the RMO.
- (12) Development of processes for efficient, effective reviews and certifications of utility acquisition invoices, and to ensure that payments are timely, done through the Defense Finance and Accounting Service (DFAS), and avoid late charges.
- (13) Annual review of existing utilities acquisition contract rates, assessment of load and demand characteristics, and making or recommending adjustments of rates, charges, and contract terms and conditions.
- (14) Monitoring utility rate changes or notifications of proposed rate changes and notifying the ADAPPO through proper command channels.
- (15) Biennial (preferably annual) review of the sale of utilities and related services, in coordination with the RMO, to recover utilities services' reimbursements.
  - (16) Determination, with the assistance and concurrence of the RMO, of the garrison's utilities sale rates.
- (17) Preparation of sales instruments (see para 4–12), executing the utilities sale portion of MOUs, inter-service, and intragovernmental support agreements, and providing direction and assistance to the contracting officer in executing utilities sales instruments.
- (18) Working together with the USACE district UtilSO engaged with utilities acquisition for military construction, Army (MCA); minor construction; and sustainment, restoration, and modernization (SRM) projects to determine the appropriate contracting options. This determination must be made early in the project conception, or project planning stage, prior to developing the programming documentation.
- (19) Coordination of utilities acquisition and sale actions with the garrison energy manager, to ensure accuracy and completion of utilities data for reporting purposes to the Army budget and the Army Energy and Water Reporting System.

### 2-7. Commander, U.S. Army Corps of Engineers

The Commander, USACE manages the Army Commercial Utilities Program.

- a. Deputy Army Power Procurement Officer. The DAPPO is appointed by the APPO. The DAPPO resides at the Headquarters, USACE. The DAPPO will—
  - (1) Assist the APPO in developing DA policies and guidance on acquiring and selling utilities.
  - (2) Assist the APPO in administering and overseeing the acquisition and sale of utilities and related services.
- (3) Provide DA program management oversight for acquiring utilities services and for the sale of utilities and related services
- (4) Serve as the Army representative to the Defense Federal Acquisition Regulation Supplement (DFARS) Utilities Committee, Defense Utilities Energy Coordinating Council Acquisition Subcommittee, Federal Utilities Partnership Working Group meetings, and other higher headquarters meetings and committees dealing with issues related to utilities acquisition and sale policies.
- (5) Represent the Army at the Tri-Services Utility Rates Working Group meetings on utilities acquisition and sale matters. The group is an unofficial, informal forum where the military Services discuss utility rate intervention issues of mutual interest.
- (6) Ensure compliance with unique policies and procedures of the FAR System pertaining to the acquisition of utilities services.

- (7) Ensure compliance with unique policies and procedures of the DOD and Army reimbursable policies pertaining to the sale of utilities and related services.
- (8) Approve all utilities services acquisition and sale contracts, memorandum of understandings (MOUs), interservice, or intragovernmental support agreements that require waiver of current utilities acquisition and sale policies and guidance (see paras 3-4a and 4-7a).
- (9) Approve exceptions to utilities acquisition and sale policies and guidance consistent with controlling laws and regulations.
- (10) Coordinate and assist in resolving Army internal differences within the contracting, legal, and public works execution communities on utilities acquisition and sale contracting actions whenever the differences cannot be resolved by lower authorities.
- (11) Establish and manage the Army Utilities Services Acquisition and Sale Specialist Training and Certification Program (see paras 3–11 and 4–17).
  - (12) Develop and manage the Army Commercial Utilities Program Oversight/Management Web Application.
- (13) Through the ADAPPO, provide technical assistance in the preparation, technical utility rates selection, negotiation, and award of solicitations and contracts for the acquisition of utilities services; and for MOUs, inter-service, or intragovernmental support agreements for the sale of utilities and related services.
- b. Assistant Deputy Army Power Procurement Officer. The ADAPPO is appointed by the DAPPO. The ADAPPO resides at the U.S. Army Engineering and Support Center (CEHNC), Huntsville, AL. The ADAPPO will—
- (1) Review and approve the technical provisions of acquisition of utilities services, and sale of utilities and related services for contract terms extending beyond the current fiscal year and authorized by law, regulations, and/or GSA or other delegated authority, as applicable, and within the limits specified in paragraphs 3-4b and 4-7b.
- (2) Serve as chief of the Army's mandatory technical center of expertise for the acquisition of utilities services and the sale of utilities and related services. In this role, the ADAPPO will provide all necessary engineering, planning, and technical assistance to ACOMs, ASCCs, or DRUs having landholding responsibilities (hereafter also referred as Army landholding commands); Army Contracting Command (ACC); Corps districts; and others, as needed.
- (3) Direct technical or legal reviews of contracts for the acquisition of utilities services or instruments for the sale of utilities and related services.
- (4) Direct technical or legal reviews of contracts for the acquisition of utilities services or instruments for the sale of utilities and related services, when requested by the Army landholding command or the garrison commander, and technical or legal authorities were already delegated to them per paragraphs 3–4 and 4–7, as applicable.
- (5) Maintain a virtual central repository of all utility services acquisition and sales contracts information, separate from the contracting officer's official records.
- (6) Perform periodic evaluations and market research, and attend Public Utilities Commission rate case hearings to identify potential cost-savings opportunities.
- (7) Assist and provide training (as necessary) to garrisons, Army landholding commands and district UtilSOs on achieving utility cost-savings measures.
- (8) Provide technical assistance to the Chief, Army Regulatory Law and Intellectual Property Office (ARL&IPO) during rate case interventions and/or litigations, by providing expert witnesses and other technical and legal assistance.
  - (9) Perform utilities acquisition and sales staff assistance visits.
- (10) Serve in conjunction with the Army landholding command UtilSO as the Army's SUMO for the DOD (noncentralized) electricity program, in accordance with DOD 4140.25–M.
- (11) Through commanders of landholding commands, provide technical assistance in the preparation, technical utility rates selection, negotiation, and award of contracts for the acquisition of utility services; and MOUs, interservice, or intragovernmental support agreements for the sale of utilities and related services.
- c. U.S. Army Engineering and Support Center, Huntsville Utilities Legal Counsel. Under the technical supervision of the USACE Chief Counsel, the CEHNC Utilities Legal Counsel will—
- (1) For contracts for the acquisition of utilities services or for instruments for the sale of utilities and related services—
  - (a) Review utilities solicitations and proposed acquisition contracts, and determine if they are legally sufficient.
- (b) Review any supplemental agreements and change orders to utility services acquisition contracts for legal sufficiency.
- (c) Review alterations and additions to utilities sales contracts, MOUs, inter-service, or intragovernmental support agreements, as applicable, for legal sufficiency.
- (2) Perform legal reviews of contracts for the acquisition of utilities services or instruments for the sale of utilities and related services, when requested by the Army landholding command or the garrison commander and legal authority were already delegated to them, per paragraphs 3–4 and 4–7, as applicable.
  - (3) Provide legal assistance to the Chief, ARL&IPO during rate case interventions and/or litigations, as requested.
- d. District engineers. The USACE district engineers engaged in providing military construction, Army (MCA), minor construction, and SRM projects for Army garrisons are responsible for arranging for the acquisition of utilities

services required to support the project either through agreements with supporting garrisons or negotiation and preparation of separate contracts (see AR 420-1). The USACE district engineers will—

- (1) Designate a district UtilSO with experience in utilities rate analysis, and negotiations with utility companies, to work together with the district contracting officer in the acquisition of utilities services.
- (2) Ensure the district contracting officer and district UtilSO provide contact information and necessary support to the ADAPPO and Army landholding command UtilSOs under their purview.
- (3) Ensure district coordination with the installation contracting officer and the garrison UtilSO on the sale of utilities and related services to MCA, minor construction, and SRM contractors engaged by the district.
  - e. District utilities services officers. The USACE district UtilSOs will-
- (1) Prepare technical supporting data pertaining to the acquisition of utilities services as required by this regulation, the FAR, and its supplements.
  - (2) Participate in technical and rates negotiations and in discussions supporting the district contracting officer.
  - (3) When engaged in providing MCA, minor construction, and SRM projects for Army garrisons—
- (a) For projects that do not require new connections with the local distribution company (LDC), or where there are no connection charges or other expenditures involving the use of military construction funds, the garrison will have the option to negotiate and award a modification to an existing utility service contract in effect. This option includes issuing a utility service exhibit under an existing GSA areawide contract, or issuing a new separate utility service contract, whichever is more advantageous to the Government.
  - (b) For projects that require new connections with the LDC—
- 1. Advise the ADAPPO, any applicable landholding command UtilSO, any applicable ACC contracting officer responsible for post-award contract administration, and the garrison UtilSO of planned contract negotiations and the status of acquisition actions.
  - 2. Include these parties in the discussion and resolution of complicated or potentially controversial issues.
  - 3. Work in conjunction with these parties to determine the best contracting options.
- (c) Refer and coordinate the sale of utilities and related services to the garrison UtilSO in all military construction contracts requiring the sale of utilities and related services.
- f. District contracting officers. When engaged in providing MCA, minor construction, and SRM projects for Army garrisons, USACE district contracting officers will—
- (1) Process actions for the acquisition of utilities services after coordinating with the appropriate UtilSO (garrison UtilSO or district UtilSO) and the CEHNC legal counsel.
- (2) Negotiate contracting actions for the acquisition of utilities services with the LDC or utility supplier. Negotiations will be conducted with the assistance of the appropriate UtilSO (garrison UtilSO or district UtilSO) and the CEHNC legal counsel.
- (3) Review and analyze utility contracts, and investigate opportunities to streamline the procurement process and reduce procurement costs.
- (4) Authorize, in writing, all negotiations with utility suppliers conducted by anyone other than the district contracting officer.
- (5) Execute solicitations and contracts for the acquisition of utilities services, following validation and approval of the technical, legal, and administrative requirements by the proper technical, legal, and administrative authorities as established in paragraph 3–4.

### 2-8. Commander, Army Contracting Command

Under delegated authority from the COE, the Commander, ACC is responsible for the award and execution of contracts for the acquisition and sales of utilities and related services at the ACC regions and the Installation Contracting Offices. The ACC (with assistance from the garrison UtilSO, the garrison contracting legal counsel, and/or the CEHNC utilities legal counsel, as applicable) awards and executes contracts for the acquisition and sales of utilities and related services. The Commander, ACC will ensure that contracting officers under their command will—

- a. Process actions for the acquisition of utilities services after coordination with the garrison UtilSO, the garrison contracting legal counsel, and/or the CEHNC utilities legal counsel, as applicable.
- b. Negotiate contracting actions for the acquisition of utilities services with the LDC, or utility supplier, with the assistance of the garrison UtilSO, the garrison contracting legal counsel, and/or the CEHNC utilities legal counsel, as applicable.
- c. Review and analyze utility contracts and investigate opportunities to streamline procurement processes and reduce procurement costs.
- d. Authorize, in writing, all negotiations with utility suppliers conducted by anyone other than the contracting officer
- e. Execute solicitations and contracts for the acquisition of utilities services, following validation and approval of the technical, legal, and administrative requirements by the proper technical, legal, and administrative authorities as established in paragraph 3–4.

- f. Execute utilities sales contracts as directed by the garrison UtilSO following validation and approval of the technical, legal, and administrative requirements by the proper technical, legal, and administrative authorities, as established in paragraph 4–7.
  - g. Administer the contract post-award and monitor the terms of contract with the assistance of the garrison UtilSO.

### 2-9. Garrison contracting legal counsel

For contracts to acquire utilities services or instruments for the sale of utilities and related services, where legal authority has been delegated to the garrison commander per paragraphs 3–4 or 4–7, as applicable, the garrison contracting legal counsel will—

- a. Review utilities solicitations and proposed acquisition contracts and determine if they are legally sufficient.
- b. Review any supplemental agreements and change orders to utilities service acquisition contracts for legal sufficiency.
- c. Review alterations and additions to utilities sales contracts, MOUs, inter-service, and intragovernmental support agreements, as applicable, for legal sufficiency.
- d. Request assistance from the CEHNC legal counsel in difficult or controversial utility services acquisition contracts or utilities sale instruments, as applicable.

### 2-10. The Judge Advocate General

TJAG is responsible for litigation in which the Army has an interest as per AR 27–40. The Chief, ARL&IPO is responsible for performing the regulatory law functions assigned to TJAG and representing Federal executive agencies, DOD, and DA consumer interests in utility regulatory matters before local, State, and Federal administrative agencies and commissions. The Chief, ARL&IPO will—

- a. Provide legal advice and assistance relating to all regulatory matters concerning the acquisition and sales of utilities and related services.
- b. Participate in utility rate intervention in accordance with responsibilities established by AR 27–40 and GSA delegation of authority to represent Federal executive branch agencies on specific utility suppliers' rate cases.
  - c. Consult with the ADAPPO on technical issues related to the acquisition and sale of utilities and related services.

### Chapter 3 Acquisition of Utilities Services

### 3-1. Utilities acquisition policy

- a. General.
- (1) The acquisition of utilities (electricity, natural or manufactured gas, water, sewage, thermal energy, chilled water, steam, hot water, or high temperature hot water) services will comply with applicable laws, executive orders, and regulations regarding renewable energy requirements and energy conservation compliance to include, but not limited to, Public Law 109–58; Public Law 110–40; and Executive Orders 13423 and 13514.
- (2) Utilities services will be procured from other Federal, local, municipal, regional, or private utility distribution companies or suppliers, as allowed by laws and regulations, at the best value to the Army, consistent with appropriate regard for high standards of health and sanitation, adequacy to support needs, operations efficiency, and service reliability. The procurement of utility services will foster energy and water conservation, security, sustainability, and the protection and improvement of the quality of the environment.
- (3) In support of Executive Order 13423, Section 2(b), Title 3, Code of Federal Regulations, Army garrisons and facilities are encouraged to purchase utilities from new renewable sources (defined as renewable generation placed in service after 1 January 1999) to meet the goal that at least half of the statutorily required renewable energy consumed by the Army in a fiscal year comes from new renewable sources. Furthermore, Army garrisons and facilities will advance sustainable acquisition of utility services by ensuring compliance with FAR Section 23.103 requirements.
- (4) Army garrisons and facilities are encouraged to form partnerships with other military and Federal agencies, local communities, and utility suppliers to obtain utility service from renewable sources in accordance with the established Army policy and guidance for energy related projects and services and other applicable Army guidance related to renewable energy projects.
- (5) The purchase of renewable energy certificates (RECs) is discouraged. However, the purchase of RECs, whether in part or in whole, will be considered to make the energy project feasible, in accordance with current DA policies and guidance on energy related projects and services, and renewable energy credits.
  - b. Electric services.
- (1) The acquisition of electricity must reflect the energy reduction goals established by Section 8253(a)(1), Title 42, United States Code, as amended; and Executive Order 13423, Section 2(a), Title 3, Code of Federal Regulations; as indicated in table 3–1.

Table 3-1
Energy reduction goals to be reflected in the acquisition of electricity

Fiscal year	Energy reduction goal <sup>1</sup> set by 42 USC 8253(a)(1)	Annual energy intensity reduction goal <sup>2</sup> set by Executive Order 13423 and 3 CFR 2(a)		
2006	2 percent	3 percent		
2007	4 percent	3 percent		
2008	9 percent	3 percent		
2009	12 percent	3 percent		
2010	15 percent	3 percent		
2011	18 percent	3 percent		
2012	21 percent	3 percent		
2013	24 percent	3 percent		
2014	27 percent	3 percent		
2015	30 percent	3 percent		

Legend for Table 3-1:

EO — Executive Order

USC — United State Code

#### Notes:

- (2) When acquiring electricity, Army garrisons and facilities are required to purchase electricity generated from renewable sources when life cycle cost-effective to enhance energy security. When acquiring renewable electricity, consider 42 USC 15852, and related Army strategic and planning guidance. The Army's goal is to increase the amount of electrical energy consumed from renewable sources to the consumption targets shown in table 3–2. For purposes of determining compliance with the 42 USC 15852 requirement, the amount of renewable energy consumed will be doubled (counted as double for reporting purposes) if—
  - (a) The renewable energy is produced and used on-site at a Federal facility;
  - (b) The renewable energy is produced on Federal lands and used at a Federal facility; or
- (c) The renewable energy is produced on Indian land, as defined in Title XXVI of 25 USC 3501, and used at a Federal facility.

Table 3–2
Minimum targets for the Army's renewable-source electricity consumptions

Fiscal year	42 USC 15852(a) requirements
2007	3 percent
2008	3 percent
2009	3 percent
2010	5 percent
2011	5 percent
2012	5 percent
2013	7.5 percent
2014	7.5 percent
2015	7.5 percent
2020	7.5 percent
2025	7.5 percent
2030	7.5 percent

<sup>&</sup>lt;sup>1</sup> Indicated 42 USC 8253(a)(1) goals are as of the time that this regulation was released for official publication and in comparison with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003. See current 42 USC 8253(a)(1) for the latest Federal statutory goals.
<sup>2</sup> Initial year goal is relative to the baseline of the agency's energy use in fiscal year 2003. Thereafter, the goal is based on prior year goal.

- (3) Army garrisons and facilities are encouraged to subscribe to time-based pricing and other forms of demand-response pricing during the acquisition of electricity, whenever the garrison or facility can respond to such demand pricing mechanism and it is in the best interest of the Government. It is the policy of the United States (Section 1252(f), Act of 8 August 2005, Public Law 109–58, Volume 119, US Statute at Large, p. 966) that time-based pricing and other forms of demand response, whereby electricity supplier customers are provided with electricity price signals and the ability to benefit by responding to them, will be encouraged. Deploying such technology and devices that enable electricity customers to participate in such pricing and demand-response systems will be facilitated by the electricity supplier, and unnecessary barriers to demand-response participation in energy, capacity, and ancillary service markets will be eliminated by the supplier. It is further the policy of the United States that the benefits of such demand-response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, will be recognized. Pursuant to 10 USC 2919, Army garrisons and facilities can participate in demand-response programs—to manage energy demand or reduce energy usage during peak periods—conducted by an electric utility, independent system operator, or State agency. However, participation is allowed only when the participation does not jeopardize the Army mission or security, provides benefits to the Government, and is permitted by AR 420–1 and other related Army guidance. Any financial incentive received will be—
  - (a) Received as a cost reduction in the utility bill for a facility; or
- (b) Deposited into the Treasury's Energy Savings Financial Incentives Fund for use, to the extent provided for in an appropriations act, by the military department, Defense agency, or instrumentality receiving such a financial incentive for energy management initiatives.
- c. Water services. The acquisition of potable water services will reflect the water consumption intensity reduction goals established by EO 13423, Section 2(c), Title 3, Code of Federal Regulations; and EO 13514, Section 2(d), Title 3, Code of Federal Regulations; as indicated in tables 3–3 and 3–4.

Table 3–3
Water consumption intensity reduction goals to be reflected in potable water services acquisitions

Fiscal year	Annual consumption intensity reduction goal set by EO 13423 and 3 CFR 2(c)	Annual consumption reduction goal set by EO 13514 and 3 CFR 2(d)(i)
2008	2 percent	2 percent
2009	2 percent	2 percent
2010	2 percent	2 percent
2011	2 percent	2 percent
2012	2 percent	2 percent
2013	2 percent	2 percent
2014	2 percent	2 percent
2015	2 percent	2 percent
2016		2 percent
2017		2 percent
2018		2 percent
2019		2 percent
2020		2 percent

The initial year goal is relative to the baseline of the agency's water consumption in fiscal year 2007. Thereafter, the goal is based on the prior year goal.

Table 3–4 Industrial, landscaping, and agricultural water consumption-reduction goals to be reflected in water services acquisitions

Fiscal year	Annual consumption-reduction goal as set by EO 13514 and 3 CFR 2(d)(ii)
2011	2 percent
2012	2 percent
2013	2 percent
2014	2 percent
2015	2 percent
2016	2 percent
2017	2 percent
2018	2 percent
2019	2 percent
2020	2 percent

The initial year goal is relative to a baseline of the agency's industrial, landscaping, and agricultural water consumption in fiscal year 2010. Thereafter, the goal is based on the prior year goal.

### 3-2. Utilities acquisition general guidance and procedures

- a. The FAR, as supplemented by the DFARS, AFARS, and this regulation are the basic documents to be followed in the acquisition of utilities services at Army garrisons and facilities in the United States and its possessions and territories. These documents contain policy, responsibilities, procedures, and contract format requirements. The FAR Part 41, DFARS Part 241, and AFARS Part 5141 relate to the acquisition of utilities services. Applicable contracting methods are provided in the FAR Part 12 (relating to the acquisition of commercial items procedures), FAR Part 13 (relating to simplified acquisition procedures), FAR Part 14 (relating to sealed bidding procedures), FAR Part 15 (relating to contracting by negotiation procedures), FAR Part 16 (relating to contract types, in addition to the special utility service contract types described in FAR Part 41 and its supplements), FAR Part 17 (relating to special contract methods) and their DFARS and AFARS supplements. The FAR Part 23 and their DFARS and AFARS supplements relate to acquisition policies and procedures supporting the Government's programs on the environment, energy and water efficiency, renewable energy technologies, occupational safety, and the drug-free workplace.
- b. Garrisons under the territory of a Federal Power Marketing Administration (FPMA) agency or the Tennessee Valley Authority (TVA), where the local distribution company offers distribution or willing services of Federal electric power to the garrison, will investigate the economics of procuring electric services through an FPMA agency or TVA, as applicable. Note that FPMA agencies and TVA have different procurement authorities and regulations governing the contracting of the sale of their Federal power, and these agencies do not follow the FAR System. Army authority to procure electric services from an FPMA agency or TVA is 31 USC 1535. However, contracting officers must follow the guidance and procedures in FAR Subpart 17.5. Garrisons will secure Federal power allocation and procure Federal electric power services from an FPMA agency or TVA, as applicable, if it is determined that such procurement, to include distribution/willing of the Federal power, is economically advantageous to the Army.
- c. Status of forces agreements or similar applicable agreements (for example, Defense cooperation agreements) with applicable host nations will govern contracting for the acquisition of utilities services and the sales of utilities and related services at garrisons and facilities located in foreign countries. Army garrisons and facilities, located OCONUS and its territories, may vary the formats and technical provisions of contracts to comply with local practices with approval from the applicable Army landholding command UtilSO.
- d. Army garrisons and facilities, located in the continental United States (CONUS) will participate in the DOD Centralized Acquisition of Direct Supply Natural Gas (DSNG) Program administered by the Defense Logistics Agency, Energy (DLA–Energy) when cost-effective and the DSNG has the same degree of supply reliability as other practical alternative energy sources in accordance with Department of Defense instruction (DODI) 4170.11 and DOD 4140. 25–M, Volume III, Chapters 1 and 2. See paragraphs 3–4h and 3–4i, for installation participation exclusions.
- e. The garrison or district UtilSO, with technical assistance from the ADAPPO, will investigate and evaluate economy-of-scale benefit of utility load aggregations with other Army garrisons and facilities, military services, and Federal agencies in close proximity. The UtilSO also will partner with them on the acquisition of the utilities if the affected agencies agree and expected results are determined to be in the best interest of the Government.
- f. In states where the electric industry has restructured, and the generation of electricity has been deregulated, Army garrisons and facilities are encouraged to partner with the DLA–Energy and participate in the DLA–Energy's Competitive Electricity Program if it is determined to be in the best interest of the Government and in accordance with DOD 4140.25–M, Volume III, Chapter 6.

- g. Acquisition of utilities services will be planned to promote and provide full and open competition (see 10 USC 2304, FAR Part 6, FAR Part 7, FAR Section 41.202, and their supplements).
- h. Garrisons or Army facilities bordered by multiple-franchised utility service providers will investigate the applicability of acquiring utilities services via competitive procurement.
- *i.* GSA areawide contracts will be used wherever applicable and most economically advantageous for the Government. Existing contracts will not be terminated to enter into a GSA areawide contract without evaluating the impacts of the termination liabilities.
- j. The garrison or district UtilSO, with the assistance of the contracting officer, will conduct a market survey on an annual basis to determine the existence of competitive sources (AFARS Part 5110, FAR Section 41.401, FAR Section 41.702) for those Army garrisons or facilities that are procuring utilities in a noncompetitive basis. If new competitive sources exist, the garrison or district UtilSO will evaluate the impact of liabilities from terminating existing contract(s). If the benefits of competition exceed any termination liabilities, the garrison or district UtilSO and contracting officer will initiate necessary actions to terminate the current contract(s). Initiate procurement actions based on competitive procedures within a year.
- k. Indefinite term contracts (DFARS Procedures, Guidance, and Information (PGI) 241.205) may also be used in contracts longer than a year only on regulated sole-source utilities acquisition actions. The garrison or district UtilSO, with the assistance of the contracting officer, will conduct a market survey on an annual basis to determine the existence of competitive sources (AFARS Part 5110, FAR Section 41.401, FAR Section 41.702). If competitive sources exist, the garrison or district UtilSO will evaluate the impact of any liability from terminating an existing contract(s). If the benefits of competition exceed any termination liabilities, the garrison or district UtilSO and the contracting officer will initiate necessary actions to terminate the indefinite term contract(s) and award a definite term contract(s) on a competitive basis.
  - l. The regulatory or statutory authority permitting the acquisition of utilities services are—
  - (1) DFARS PGI 241.205 permits the use of indefinite term utility contracts.
- (2) 40 USC 501 permits acquiring utilities services for a definite term extending beyond a current fiscal year, but not exceeding 10 years.
- (3) 10 USC 2688 allows the conveyance of a utility system, or part thereof, and procurement of utilities services in connection with the conveyance of the utility system for terms of up to 50 years. Utilities privatization does not consider the cost of the commodity.
- (4) 10 USC 2410q conditionally provides multiyear contracting authority for the purchase of electricity from renewable energy sources, as defined in Section 15852(b)(2), Title 42, United States Code, for a period of up to 10 years.
- (5) 10 USC 2922a permits the procurement of generated electricity (energy) through contracts for the provision and operation of energy production facilities on real property under the Secretary of the Army jurisdiction or on private property for a period of up to 30 years with the approval of the Secretary of Defense.
  - (6) Other authorities as stated in DFARS PGI 241.103.
- m. Contracting officers entering into contracts under the authority of 40 USC 501(b)(1)(B), pursuant to DFARS PGI 241.103, need to have sufficient budget authority only to obligate the first year of the contract. (See Principles of Federal Appropriations Law.) Future years may be funded with appropriations subject to availability of funds. Contracting officers must ensure that the FAR Clause 52.232–19, which addresses funding for the next fiscal year, is included in solicitations and contracts for utility services.
- n. Army garrisons and facilities should fund for connecting existing facilities to a supplier's distribution system, or to connect new or expanded facilities to a supplier's distribution system through military construction (MILCON) type projects funded by authorized MCA; military construction, Army Reserve; military construction, Army National Guard; Army family housing (AFH) construction; or other authorized funds using the DD Form 1391 (FY \_\_\_\_\_ Military Construction Project Data) process. However, the use of operation and maintenance, Army (OMA) funds for the connection of existing facilities to a supplier's distribution system with a connection cost equal or less than the statutory limits established by 10 USC 2805 for the use of OMA funds for an unspecified minor military construction project (\$750,000 at the time of this regulation's issuance) is permissible. Contributions to the cost of expanding a supplier's production facilities or main distribution systems are considered to be for construction and not for connecting existing facilities. Fees, charges, and costs to expand the capacity of a utility provider's plant in order to support an Army garrison's utility demand are deemed to be included as construction costs and subject to the MILCON type and OMA funding limits previously mentioned. The installation, expansion, or connection of Government-owned facilities on Government-owned property is also classified as construction (see AR 420–1). For policy regarding funding use for utility system capital improvements on an Army installation with a privatized utility system, please refer to ASA (IE&E)'s guidance for privatized utility systems.
- o. Advanced payment for a utility service account activation or initiation fee, membership fee, security deposit and/ or connection charge is permitted when such advance payment practice is regulated by a utility regulatory body or is customary in the region and generally charged to all customers of the utility company or supplier. Advance payment authority is 10 USC 2396(a)(4).

- p. Acquisition plans will be prepared pursuant to FAR Part 7, as supplemented by the DFARS, AFARS, this regulation, and other applicable Army guidance.
- q. The acquisition of utility services from energy related projects (see definition in the glossary) will also follow the reporting, review, and approval process established by ASA (IE&E) for energy-related projects and services.
- r. Army garrisons and facilities must follow security and antiterrorism/force protection requirements established by DODI 2000.12, DODI 2000.16, AR 190–13, AR 190–51, and DA Pam 190–51 in regard to contracting processes, contractor physical access to the installation, and the protection of personnel and utility infrastructure.
- s. When Army procures utilities services as a tenant to another DOD (non-Army) or Federal agency, the utilities procurement must comply with the requirements of FAR Subpart 17.5 and DODI 4000.19.

### 3-3. Considerations on the acquisition of utility services from renewable sources projects through power or energy purchase agreements

When acquiring utility services from renewable sources projects through a proposed power purchase agreement (PPA) or energy purchase agreement (EPA), the following must be taken into consideration—

- a. The contractor's proposed PPAs or EPAs are, fundamentally, financial documents. As such many of the terms and the format are dictated by the institution providing the financing and not necessarily the developer.
- b. The contractor's proposed PPA or EPA may or may not conform to the FAR, and its supplement acquisition guidelines. However, conversion to a FAR utility contract format must be done carefully. Changes to the contractor's proposed PPA or EPA may jeopardize the terms of financing, possibly increasing costs or causing the financier to opt out.
- c. Installation contracting officers and the garrison UtilSO will pay particular attention to the following contractorproposed PPA or EPA terms and conditions and evaluate the risk of the Army accepting such terms and conditions—
  - (1) "Take or pay provisions" that require the Army to purchase output the Army does not need.
- (2) "Input guarantees" that are functionally the same as a "take or pay" requirement. These take the form of a "guarantee" of a minimum amount of waste for a waste-to-energy plant or a minimum steam requirement for example.
- (3) "Resale prohibitions" that do not allow the Army to resell output the Army does not need or to wheel it to another Federal entity.
  - (4) "Termination clauses" that are based on-
- (a) A future calculation of "fair market value (FMV)" rather than the contractual obligations explicit in the contract, or
  - (b) Future lost revenues.
- d. When considering projects that also will connect to the local distribution system, consider applicable regulatory bodies' interconnection rules in the initial project planning phase.
- e. Consider the possible regulated, stranded cost that the Army may be liable for when the Army switches to another utility or energy supplier. A utility regulatory body may allow the local utility company to recover losses, related to a decrease in revenue generation capability from the Army, that are needed for the operation, maintenance, and capitalization of the utility company's invested capital equipment that were necessary to provide utility services to, and meet load requirements of, the Army.
- f. The Army is required to retain RECs ownership of on-site renewable energy projects in order to count them toward PL 109–58 or EO 13423 requirements. The Army should meet the requirements for retention, vintage, certification, third party verification audit, and the avoidance of double counting RECs by different entities according to the Department of Energy's Renewable Energy Requirement Guidance for EPAct 2005 and EO 13423, dated January 28, 2008, and the Department of the Army Policy for Renewable Energy Credits, dated May 24, 2012.
- g. The PPAs or EPAs using the authority of 10 USC 2410q to procure electricity from renewable sources, as defined in 42 USC 15852(b)(2), for a period of up to 10 years, must comply with the requirements of DFARS Section 217.174.
- h. The PPAs or EPAs using the authority of 10 USC 2922a to obtain contract terms of up to 30 years require the approval of the Secretary of Defense, or their duly authorized representative. The PPAs or EPAs, with a term of 10 years and up to 30 years, require approval as applicable of the ASA (IE&E), or their duly authorized representative, before going to the Secretary of Defense for approval.

### 3-4. Utilities service acquisition contract and waiver approval levels, Army wide

Contracts and regulation waiver requests for the acquisition of utilities services will be approved by the proper administrative, technical, legal, and waiver approval authorities (see tables 3–5 and 3–6), as applicable. This will also include acquisition of utilities services bundled or combined with the acquisition of other supplies and services. Contract approvals will be completed following approval authority, or other applicable Army, guidance.

- a. The DAPPO will-
- (1) Review and approve, as applicable, all utilities services acquisition contracts that require individual waiver of, or deviation from, current Army utilities acquisition policy and guidance, or requiring higher Headquarters, Department of the Army (HQDA) or DOD approval.

- (2) Review and approve individual waiver of, or deviation from, current Army utilities acquisition policy and guidance.
  - (3) Review and process contracts or waivers requiring higher HQDA or DOD approval.
  - b. The ADAPPO will—
  - (1) Provide technical and legal reviews and approvals of—
  - (a) Proposed utilities acquisitions.
- (b) Changes or deviations to the contract technical specification clauses that do not require a waiver of current policy and guidance.
- (c) Individual changes or deviations to formats, provisions, and clauses specified in the FAR Section 52.241, DFARS Section 252.241, and AFARS Section 5152.241 for all contracts as long as the changes are consistent with current utilities acquisition regulations, policy, and guidance.
  - (2) Delegate, as appropriate, limited authorities in paragraph 3–4a(1) to—
  - (a) Army landholding command UtilSOs in CONUS for utility services acquisitions with-
  - 1. Estimated annual costs equal to, or less than, \$750,000, or
- 2. Connection costs equal to, or less than, the maximum statutory limit established by 10 USC 2805 for the use of OMA funds for an unspecified minor military construction project (\$750,000 at the time of this regulation's issuance).
  - (b) Army landholding command UtilSOs with OCONUS regions or facilities.
  - (c) District engineers, beyond thresholds established in paragraph c, if deemed appropriate.
- c. District engineers engaged in providing MCA, minor construction, and maintenance and repair (M&R) work for Army garrisons, will approve utilities acquisitions handled by the Army Corps of Engineers' districts with—
  - (1) Estimated annual costs equal to, or less than \$750,000, or
- (2) Connection costs equal to, or less than, the maximum statutory limit established by 10 USC 2805 for the use of OMA funds for an unspecified minor military construction project (\$750,000 at the time of this regulation's issuance).
  - d. The Army landholding command UtilSO will-
  - (1) Administratively approve proposed military utilities acquisitions of garrisons under their purview.
  - (2) Subject to delegation from the ADAPPO, technically and legally approve for garrisons under their purview—
  - (a) Proposed utility services contracts.
- (b) Changes or deviations to the contract technical specification clauses that do not require a waiver of current policy and guidance.
- (c) Individual changes or deviations to formats, provisions, and clauses specified in the FAR Section 52.241, DFARS Section 252.241, and AFARS Section 5152.241 for all contracts as long as the changes are consistent with current utilities acquisition regulations, policy, and guidance.
- (3) Army landholding commands may delegate to garrison commanders under their purview the authority in paragraphs (1) and (2), for proposed utility services acquisitions with—
  - (4) Estimated annual costs equal to, or less than \$750,000, or
- (5) Connection costs equal to, or less than, the maximum statutory limit established by 10 USC 2805 for the use of OMA funds for an unspecified minor military construction project (\$750,000 at the time of this regulation's issuance).
- e. The principal assistant responsible for contracting will approve all individual deviations from other standard FAR or DFARS provisions and clauses, with certain exceptions, according to AFARS Section 5101.403.
- f. The ASA (ALT) will approve class deviations to the FAR and DFARS, with certain exceptions, according to AFARS Section 5101.402(1) and DFARS Section 201.404(b)(ii).
- g. The DFARS Sections 201.402(1) and 201.404(b)(i) require the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) DPAP) to approve individual and class deviations from FAR Section 3.104, FAR Subpart 27.4, FAR Part 30, FAR Subpart 31.1, FAR Subpart 31.2, FAR Part 32 (except Subparts 32.7 and 32.8 and the payment clauses prescribed by Subpart 32.1), and their DFARS equivalents. Submit deviation request through proper Army channels to the Office of the Assistant Secretary of the Army for Procurement (ODASA (P)) following guidance on AFARS 5101.402(3).
- h. The DLA-Energy and the Army's SUMO may mutually agree to exclude an installation from a DLA-Energy DSNG contract when—
  - (1) An award is uneconomical.
  - (2) The LDC does not provide transportation from the citygate to the end-use customer.
  - (3) If ongoing or pending legal or regulatory action adversely impacts participation in the program.
  - (4) It is impacted by base realignment and closure actions.
- (5) Existing contractual arrangements with the LDC or with existing multiyear DSNG suppliers offer better prices or have termination liabilities exceeding DLA-Energy direct supply contract cost benefits, or
- (6) Loss of utility-sponsored demand side management program benefits is greater than the potential savings available through the DLA-Energy DSNG Program. The Army will enter into and maintain all necessary LDC

transportation agreements to support delivery to the burner tip and for ensuring that sufficient funding is available for payment. The Army will consult with DLA-Energy to ensure that the DSNG and LDC contracts are synchronized.

*i.* Installation DLA-Energy DSNG Program participation disagreements between DLA-Energy and the Army SUMO will be elevated through the Army command channels for resolution. When the DLA-Energy and the Army cannot reach an agreement, installation program participation will be decided by the Office of the Deputy Under Secretary of Defense for Installations and Environment (ODUSD (I&E)) (see table 3–6).

Table 3–5
Approval threshold for utilities acquisitions based on estimated annual contract value

	Administrative approval		Technical and legal appr	oval	
	Estimated annual cost	Connection charge <sup>1</sup>	Estimated annual cost	Connection charge <sup>1</sup>	
Garrison commander			As delegated by the Army landholding command UtilSO <sup>2</sup>		
District engineer <sup>3</sup>	≤\$750,000 <sup>3</sup> ≤\$750,000 <sup>3</sup>		≤\$750,000 <sup>3</sup>	≤\$750,000 <sup>3</sup>	
Army landholding command UtilSO	Unlimited <sup>4</sup>		As delegated by the APDAPPO		
ADAPPO/CEHNC	NA		Unlimited <sup>5</sup>		
DAPPO	Unlimited <sup>4</sup>		Unilimited <sup>5</sup>		
ASA (IE&E) or authorized representative	10 to 30 years PPA contracts using 10 USC 2922a as authority requires approval of ASA (IE&E) or authorized representative before going to Secretary of Defense				
Secretary of Defense	PPA or EPA contracts using 10 USC 2292a as authority				

Legend for Table 3-5:

ADAPPO — Assistant Deputy Army Power Procurement Officer

ASA (IE&E) — Assistant Secretary of the Army for Installations, Energy and Environment

CEHNC — U.S. Army Engineering and Support Center, Huntsville

DAPPO — Deputy Army Power Procurement Officer

EPA — energy purchase agreement

NA — not applicable

OCONUS — outside the continental United States

PPA — power purchase agreement

UtilSO — Utilities Services Officer

### Notes:

Table 3–6
Policy on waivers of or deviations from utilities services acquisition policy, regulations, and guidance

Approval authority	Waiver
Garrison commander	NA
Army landholding command UtilSO	As delegated by the ADAPPO
District UtilSO	As delegated by the ADAPPO
Army SUMO and DLA–Energy by mutual agreement	Exclusion from the DLA-Energy DSNG Program for conditions stated in paragraphs 3-4h and 3-4i.

<sup>&</sup>lt;sup>1</sup> Connection charge limit is based on 10 USC 2805 for the use of OMA funds for an unspecified minor military construction project.

<sup>&</sup>lt;sup>2</sup> Limited to maximums of \$750,000 for annual contract cost or \$750,000 for connection charge.

<sup>&</sup>lt;sup>3</sup> For district engineers engaged in providing MCA, minor construction, and M&R work for Army garrisons. DAPPO delegated the stated administrative, technical, and legal approval authority to district engineers. The ADAPPO may redelegate their technical and legal approval authority to district engineers beyond the stated technical and legal approval thresholds if deemed appropriate.

<sup>&</sup>lt;sup>4</sup> DAPPO delegated unlimited administrative approval authority to the Army landholding command UtilSOs, with authority to redelegate this authority to a garrison commander for contracts with annual cost of up to \$750,000 or up to \$750,000 for connection charge.

<sup>&</sup>lt;sup>5</sup> DAPPO delegated unlimited technical and legal approval authority to the ADAPPO/CEHNC utilities legal counsel. "Unlimited" includes all contracts above Army landholding command UtilSO or the garrison commander's approval threshold authorities plus any technical and/or legal approvals or assistance requested by the garrison commander.

Table 3-6								
Policy on waivers	of or deviations	from utilities	services	acquisition	policy.	regulations.	and	quidance—Continued

Approval authority	Waiver
ADAPPO	Changes or deviations to contract technical specification clauses that do not require a waiver of current policy and guidance.
	Changes or deviations to formats, provisions, and clauses specified in FAR Section 52.241, DFARS Section 252.241 and AFARS Section 5152.241 for all contracts as long as the changes are consistent with current utilities acquisition regulations, policy, and guidance.
DAPPO	Individual waiver of, or deviations from, current Army utilities acquisition policy and guidance. Review and process contracts or waivers requiring higher HQDA or DOD approval.
Principal assistant responsible for contracting	Individual deviations from other standard FAR or DFARS provisions and clauses, with certain exceptions, according to AFARS Section 5101.403.
ASA (ALT)	Class deviations to the FAR and DFARS, with certain exceptions, according to AFARS Section 5101. 402(1) and DFARS Section 201.404(b)(ii).
OUSD (AT&L) DPAP (through ODASA(P))	Individual and class deviations from FAR Section 3.104, FAR Subpart 27.4, FAR Part 30, FAR Subpart 31.1, FAR Subpart 31.2, FAR Part 32 (except Subparts 32.7 and 32.8 and the payment clauses prescribed by Subpart 32.1) and their DFARS equivalents according to DFARS Sections 201.402(1) and 201.404(b)(i).
ODUSD (I&E)	Installation DLA-Energy DSNG Program participation disagreements between DLA-Energy and Army.

Legend for Table 3-6:

ADAPPO — Assistant Deputy Army Power Procurement Officer

AFARS — Army Federal Acquisition Regulation Supplement

ASA (ALT) — Assistant Secretary of the Army (Acquisition, Logistics and Technology)

DAPPO — Deputy Army Power Procurement Officer

DFARS — Defense Federal Acquisition Regulation Supplement

DLA-Energy— Defense Logistics Agency, Energy

DSNG — direct supply of natural gas

FAR — Federal Acquisition Regulation

OCONUS — outside continental United States

OUSD (AT&L) DPAP — Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)

ODUSD (I&E) — Office of the Deputy Under Secretary of Defense for Installations and Environment

NA - not applicable

PARC— principal assistant responsible for contracting

SUMO — services' utilities management officer

UtilSO — Utilities Services Officer

### 3-5. Preparation of solicitations and contracts

- a. Utility services contracting team. The contracting officer, in coordination with the garrison or district UtilSO, as applicable, prepares solicitations and contracts for the acquisition of utilities services. The garrison or district UtilSO, as applicable, provides technical support from initiation of the requirement, through negotiations, to approval of the technical provisions of the solicitation or contract. The CEHNC utilities legal officer, or garrison contracting legal counsel, provides legal review and assistance, as authorized. For additional assistance see paragraph 3–12.
- b. Master planning considerations. In formulating the scope and requirements of utility acquisition actions, the garrison will consider future sustainable development needs of the installation. The installation real property master plan provides the future development plan for installation and can provide the future growth patterns that must be supported. Further, the plan will illustrate associated energy initiatives such as district power or alternative energy initiatives that will affect future utility requirements. The plan is not static and is always responding to rapidly changing missions and other considerations. Therefore, the utility services acquisition team will work closely with the base master planning team to ensure utility acquisition actions are synchronized with both existing and future needs.
- c. Developing a statement of work. In a regulated environment, the utility services contracting team must be careful in developing the utility services statement of work and in selecting and modifying provisions and clauses. The team should ensure that the statement of work, provisions, and clauses do not conflict with regulated tariff terms and conditions, to avoid any future conflicts and problems through the administration of the contract.
- d. Preparing technical specifications. Army procedures for preparing the required technical information to support the acquisition of utilities services will follow DAPPO, ADAPPO, or any applicable Army guidance.

### 3-6. Execution of solicitations and contracts

The contracting officer will—

a. Initiate requests for approvals at least 120 days prior to contract execution.

b. Execute all solicitations and contracts for the acquisition of utilities services after technical concurrence from the UtilSO (garrison UtilSO or district UtilSO, as applicable), legal review and concurrence (as authorized) from the CEHNC utilities legal officer or garrison contracting legal counsel, and review and approval by the administrative and technical approval authorities as specified in paragraph 3–4.

### 3-7. Utilities acquisition metering

- a. The FAR Subsection 52.241–6 requires that all services furnished by the utility supplier be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the utility supplier at its expense. Though the utility supplier retains ownership, operational, and maintenance responsibilities for the utility acquisition meter, utility regulatory bodies may require or allow the utility supplier to recover certain or all costs related to the utility acquisition meter.
- (1) When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if it is permitted by the cognizant utility regulatory body and in the best interest of the Government.
- (2) In the event any meter fails to register (or registers incorrectly) the service furnished, the parties will agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment will be made to the next invoice for the purpose of correcting such errors. Invoice adjustments will comply with requirements of FAR as stated in the Government contract and applicable utility regulatory body authorized practices.
- b. Army garrisons and facilities are encouraged to enter billing arrangements based on readings from installation master meter(s) at the main point of delivery rather than from multiple submeters at the installation.
- c. When the utility supplier structures billing using multiple sub-meters due to requirements of the local independent regulatory body, the Army garrison UtilSO or contracting officer should work with the Army ARL&IPO to evaluate the feasibility and cost-effectiveness of petitioning the local independent regulatory body authorization for the Army to enter into billing arrangements with the utility supplier, based on master meters.
- d. The utility supplier will read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws.
- e. 42 USC 8253(e) requires advanced metering be used in Federal facilities by 1 October 2012 for the efficient use of energy and the reduction of electricity costs. 16 USC 2621(d)(14) requires that by 8 February 2007, electric utilities, and unregulated suppliers at those States where electricity is offered in a competitive basis, provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility and supplier vary during different time periods and reflects the variance, if any, in the utility's or supplier's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule will enable the electric consumer to manage energy use and cost through advanced metering and communications technology. Electric utilities and suppliers will provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

### 3-8. Post-award contract administration

The garrison UtilSO, in coordination with the administrative contracting officer as appropriate, will—

- a. Monitor and ensure that the terms and conditions of the awarded utilities service contracts are executed in a timely manner.
- b. Conduct monthly review of utilities acquisition invoices in accordance with the requirements of FAR 41.401 and any applicable Army guidance.
- c. Conduct annual review of utilities acquisition accounts in accordance with the requirements of FAR 41.401 and any applicable Army guidance.
  - d. Document the certification of monthly and annual reviews and the update of contract information.
  - e. Monitor and review utility rate changes (see para 3-9).

### 3-9. Utility rate changes

- a. Regulated environment.
- (1) When the garrison and/or the DFAS become aware of a proposed change in rate by a utility supplier regulated by an independent regulatory body, the garrison UtilSO must determine the impact to the garrison. The garrison UtilSO, in coordination with the garrison contracting legal counsel, will notify the ADAPPO, the landholding command UtilSO, and the ARL&IPO about any proposed change with a recommendation for whether or not the Army should intervene in the rate case. In the case of a civil works district project, when the civil works district officials become aware of a proposed change in rate by a utility supplier regulated by an independent regulatory body, the district UtilSO must determine the impact to the civil works project. The district UtilSO, in coordination with the district contracting legal counsel, will notify the ADAPPO and the ARL&IPO about any proposed change with a recommendation for whether or not the Army should intervene in the rate case.
- (2) Contract modifications, including supplemental agreements and change orders covering changes of rate under published rate schedules regulated by an independent regulatory body, do not require technical approval of higher

authority. Regulated rate changes will be incorporated by unilateral agreement as permitted by the FAR and its supplements.

- b. Unregulated environment.
- (1) When the garrison and/or the DFAS become aware of a proposed change in rate by an unregulated utility supplier or a supplier regulated by a nonindependent regulatory body, the garrison UtilSO must determine the impact to the garrison and advise the contracting officer on the proper technical actions to follow. The garrison UtilSO, in coordination with the garrison contracting legal counsel, will notify the ADAPPO, the landholding command UtilSO, as well as the ARL&IPO, about any proposed rate change. In the case of a civil works district project, when the civil works district staff become aware of a proposed change in rate by an unregulated utility supplier or a supplier regulated by a nonindependent regulatory body, the district UtilSO must determine the impact to the civil works project and advise the contracting officer on the proper technical actions to follow. The district UtilSO, in coordination with the garrison contracting legal counsel, will notify the ADAPPO and the ARL&IPO about any proposed rate change.
- (2) Contract modifications, including supplemental agreements and change orders, covering changes of rate by an unregulated utility supplier, or a supplier regulated by a nonindependent regulatory body, will be subject to the approval requirements stated in paragraph 3–4. Only the cost impact caused by the contract modifications, supplemental agreements, or change orders will be taken into consideration for determining the approval authority designated in paragraph 3–4. The proposed unregulated rate change will be incorporated into the contract only by bilateral agreement and in conformance with the terms and conditions of the contract.

### 3-10. Utilities privatization

Utilities privatization is the divestiture of the Army-owned utility infrastructure, which involves transferring ownership of the Army-owned utility infrastructure to the utility privatization contractor in accordance with 10 USC 2688 and purchasing utility distribution services from the privatization contractor. ACSIM is the proponent of the Army Utilities Privatization Program. Utilities privatization policy and guidance is found in AR 420–1, Part Five, which addresses utilities and energy management, and at the OSD utilities privatization Web site http://www.acq.osd.mil/ie/energy/utilities/utilities.shtml.

### 3-11. Army Utilities Services Acquisition and Sale Specialist Training and Certification Program

Army Utilities Services Acquisition and Sale Specialist Training and Certification Program Subject to availability of funds, the DAPPO will sponsor and develop the necessary training to provide basic and advanced knowledge and skill to the Army utilities contracting community (contracting, legal, resource management, and public works) for the effective and efficient performance of the acquisition and sales of utilities services. Training should include, but not necessarily be limited to, explanation or description of the Army Commercial Utilities Program and organization; Army authorities, regulations and guidance; statutory background; description of the utility industry; utilities regulatory process; utility rate structures; Federal and DOD utilities acquisition contracting program processes; Army sale of utilities services process; post-award contract administration of the acquisition and sales of utilities services; monitoring utilities services; and the Army Utility Rate Intervention Program. Such training will be conducted at least annually and will be the basis of the Army Utilities Services Acquisition and Sale Specialist Training and Certification Program. Personnel wanting to maintain certification will be required to take this training and refresher courses at least every 3 years.

### 3-12. Technical assistance

The ADAPPO and the landholding command UtilSO will provide upon request overall technical assistance to the garrisons and USACE districts, as applicable. Requests for technical assistance should be initiated as early as possible during project development and in accordance with applicable Army guidance.

### Chapter 4

### Sale (Reimbursement) of Utilities and Related Services

### 4-1. Utilities sales policy

The Army's general policy for sales of utilities and related services is as follows:

- a. Sales of utilities and related services, as specified in paragraph 4–5, may be made to reimbursable customers (formerly referred as "tenants" or "purchasers") specified in paragraph 4–6, in accordance with 10 USC 2686, 10 USC 2872a, 10 USC 2916, and 31 USC 1535, as applicable.
- b. Army policy is to provide utilities and related services to authorized customers in support of the Army mission; to limit, to the extent possible, sales of utilities and related services to organizations outside the installation; and to not compete unfairly with local commercial utilities providers (including Federal, local, municipal, regional, or private utility distribution companies or suppliers).
  - c. The Army will be reimbursed at full cost to the Army of providing the utilities (purchased utility commodity cost;

operation and maintenance costs of the Army-owned utility generation and/or distribution system; adjustment for losses in transmission, gain in the case of sewage; capital charges; and administrative overhead; as applicable) or the FMV (also known as local prevailing rates or fair value) of such service, whichever is higher, in accordance with DOD 7000. 14–R, as applicable, unless otherwise directed by other relevant directives or regulations, or exempted by this regulation. Sales must meet the applicable preconditions in paragraphs 4–2a and 4–2b.

### 4-2. Utilities sales general guidance and procedures

- a. Preconditions for consideration of sales.
- (1) The sale will not disrupt present or planned services to the Army.
- (2) The services are not available from local private or public suppliers.
- (3) Construction of facilities or systems by the Government, required for the sale, will not hinder future construction needed by a public or private utility company to serve a customer.
- (4) Sale of utilities and related services is not prohibited by any contract under which the Government purchases the services: and
  - (5) The customer is within the installation boundary or in the immediate vicinity of the installation.
- b. Considerations for off-post sale to non-Federal customers. Off-post sales are sales of utilities and related services made to customers that are located outside the real property boundaries of the garrison. When the sale is off-post and to a non-Federal customer, in addition to the preconditions for the consideration of sales—
- (1) The customer will submit certification to the garrison, in writing, from the closest applicable utility service supplier documenting that—
  - (a) Utilities service is not presently available to the customer.
- (b) The utility service supplier has no plans to provide utility service that will fulfill the customer's immediate needs.
  - (c) The utility service supplier consents to the sale of utilities services by the Army.
- (2) Off-post sales of utilities and related services must provide a benefit to the Army in the interest of national defense and/or the public interest. The garrison commander, in coordination with the senior commander, will make the determination of whether or not the off-post sales of utilities and related services is providing a benefit to the Army in the interest of national defense and/or the public interest. The garrison will maintain documentation of these benefits and determination decisions.
- (3) Off-post sales of utilities and related services will comply with all applicable Federal and State environmental laws.
- (4) Off-post sales of utilities and related services must meet reliability and quality standards established by appropriate local regulatory bodies.
- (5) Off-post sales of utilities and related services must not generate liabilities to the Army, including environmental liabilities, guarantee of service, damage caused by Government system malfunction, conflict with other utility suppliers, and so forth. Contracts for the off-post sale of utilities and related services will include clauses or language that limits or eliminates the Army's liability, as permitted by applicable laws.
- (6) Off-post sales of utilities and related services must not adversely impact any Army programs. Off-post sale contracts should include a statement requiring the termination of the sale contract if any Army program is adversely affected.
- (7) The term of off-post utility sales contracts will be limited to no longer than 5 years. If the off-post non-Federal customer still requires utility services from the Army after the 5-year term, the non-Federal customer and the Army garrison must follow the process of meeting and documenting the preconditions in above paragraphs 4–2a and b, again.
- c. Sales of utilities and related services outside the continental United States. Status of forces agreements or similar applicable agreements (for example, Defense cooperation agreements) with applicable host nations will govern the contracting for the sales of utilities and related services at garrisons located in foreign countries. Garrisons located OCONUS, and its territories, may vary the formats and technical provisions of contracts to comply with local practices, with approval from the applicable Army landholding command UtilSO.
- d. Instruments for the sale of utilities and related services. Sales of utilities and related services must be accomplished by written contract, memorandum of agreement (MOA), MOU, inter-service or intragovernmental support agreement, hereafter also referred as sale instruments, except for services to occupants of Government quarters (if charged). Services to occupants of Government quarters will be by execution of local application forms suitably prepared to cover accounting transactions. (See AR 420–1 for Army policy on charges for services to occupants of Government quarters.) All sales instruments will be reviewed for legal sufficiency. See paragraph 4–12 and appendix B for additional guidance on sales instruments.
- e. Charges for the sale of utilities and related services. Charges for the sale of utilities and related services to authorized reimbursable customers will be set as rates per unit, rather than fixed dollar amounts, in order to adjust for changes in costs to the Government or changes in market prices. See paragraph 4–8, for requirements for establishing unit-cost-reimbursement rates.

### 4-3. Sale of electricity from alternate energy and cogeneration production facilities

10 USC 2916 provides authority to the Army to sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary of the Army. The sale of such energy must be made pursuant to this regulation and consistent with 16 USC 2601 et seq.

### 4-4. Proceeds from the sale of utilities services

- a. Proceeds from the sale of utilities and related services to non-Federal customers under the authority of 10 USC 2686 will be credited to the appropriation currently available for the supply of that utility or service.
- b. Proceeds from the sale of utilities and related services to military housing located within the installation under the authority of 10 USC 2872a must be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid. Amounts so credited to an appropriation or account must be merged with funds in such appropriation or account, and must be available to the same extent, and subject to the same terms and conditions, as such funds.
- c. Proceeds from the sale of electrical energy generated from alternate energy or cogeneration type production facilities to a public or private utility company under the authority of 10 USC 2916—
- (1) Will be credited to the appropriation account currently available to the Army for the supply of electrical energy, or
- (2) Subject to the availability of appropriations for this purpose and the Congressional notification requirements of 10 USC 2916, the proceeds credited in paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under 10 USC 2911(b), including minor military construction projects authorized under 10 USC 2805 that are designed to increase energy conservation. Please see AR 420–1 for any additional applicable guidance. (Notice that provision of guidance related to paragraph (2) is out of the scope and authority of this AR.)

### 4-5. Authorized sale of utilities and related services

Utilities and related services that may be sold are the following:

- a. Electric power.
- b. Gas (natural, manufactured, or mixed).
- c. Water.
- d. Sewage.
- e. Steam.
- f. Refuse (garbage) collection and disposal service.
- g. Hot water.
- h. Fuel oil.
- i. Compressed air.
- j. Ice.
- k. Chilled water, mechanical refrigeration, and air conditioning.
- l. Liquefied petroleum gas (LPG).

### 4-6. Customers of utilities and related services

Customers of utilities and related services are classified as follows:

- a. Intra-Army customers.
- (1) General. (Intra-Army customers not listed below and as prescribed by Army reimbursable policy.)
- (2) Army nonappropriated fund instrumentalities (NAFI). The Army NAFI entities include:
- (a) Morale, welfare, and recreation (MWR) Categories A, B, and C activities (including Army and Air Force Exchange Service (AAFES)).
  - (b) MWR and AAFES contractors, or concessionaire contractors.
  - (c) Golf courses.
  - (3) Government-owned AFH.
  - (4) Residential communities initiative (RCI) and privatization of Army lodging (PAL) partnerships.
  - (5) U.S. Army Medical Command (MEDCOM).
  - (6) ARNG.
  - (7) U.S. Army Reserve (USAR).
  - (8) Reserve Officers' Training Corps (ROTC).
  - (9) Army special operations forces (ARSOF).
  - b. Other Department of Defense and Federal agencies.
  - (1) General. (Non-Army DOD and Federal customers not listed below.)

- (2) Other DOD (non-Army) NAFI entities.
- (3) Defense Human Intelligence (HUMINT) Service.
- (4) Defense Commissary Agency (DeCA).
- (5) Department of Defense Dependents Schools (DODDS) located OCONUS.
- c. Non-Federal organizations.
- (1) General. (Non-Federal organizations not listed below).
- (2) American National Red Cross (ARC).
- (3) United Service Organizations (USO).
- (4) Armed Services Young Men's Christian Association (ASYMCA).
- (5) U.S. scouting organizations at U.S. Army-controlled installations located overseas.
- (6) Public or private utility companies.
- d. Financial institutions.
- (1) Domestic banks.
- (2) Overseas military banking facilities (MBFs) operated under contract.
- (3) Other overseas banking offices.
- (4) Domestic credit unions with 95 percent or more Federal employee memberships.
- (5) Overseas credit unions.

### 4-7. Utilities and related services sale instruments and waiver approval levels, Armywide

Instruments for the sale of utilities and related services must be approved by the proper approval authority (see tables 4–1 and 4–2). Instrument approvals will be completed following approval authority, or applicable Army, guidance. The garrison UtilSO will estimate the total projected annual revenue value of the proposed individual sales contract, MOA, MOU, inter-service, or intragovernmental support agreement for utilities and related services to the authorized customer. The garrison UtilSO will notify the Army landholding command UtilSO and the ADAPPO, if the estimated annual sales amount of the individual contract, MOA, MOU, inter-service, or intragovernmental support agreement will exceed the garrison commander's approval threshold.

- a. The DAPPO will review and approve—
- (1) All utilities and related services sale instruments that require waiver of, or deviation from, current Army utilities sale policy and guidance.
- (2) Utilities' off-post sale to non-Federal customers. Off-post sale approval will be coordinated with the Army staff and assistant secretaries of the Army, as applicable.
  - (3) Individual waivers of, or deviation from, current Army utilities sale policy and guidance.
  - b. The ADAPPO will-
  - (1) Provide technical assistance, legal reviews, and technical approvals for-
  - (a) Proposed utilities sales contracts, MOAs, MOUs, inter-service, or intragovernmental support agreements.
- (b) Changes or deviations to the sale instrument technical clauses that do not require waiver of current Army policy and guidance.
  - (2) Delegate as appropriate limited technical, legal, changes, or deviations authorities in paragraph 4–7b(1) to—
- (a) Army landholding command UtilSOs in CONUS for utilities sale with an estimated instrument annual revenue equal or less than \$500,000.
  - (b) Army landholding command UtilSOs with OCONUS regions or facilities.
  - c. The Army landholding command UtilSO will—
- (1) Administratively approve proposed utilities sales contracts, MOAs, MOUs, inter-service, or intragovernmental support agreements for garrisons under their purview.
  - (2) Subject to delegation from the ADAPPO, technically and legally approve for garrisons under their purview—
  - (a) Proposed utilities sale contracts, MOAs, MOUs, inter-service, or intragovernmental support agreements.
- (b) Changes or deviations to sale instrument technical clauses that do not require waiver of current Army policy and guidance.
  - (3) Delegate as appropriate limited administrative, technical, and legal authorities to the garrison commander.
- d. The garrison RMO will certify the utilities sales rates for compliance with financial management policy and guidance.

Table 4–1
Approval threshold for utilities sales, based on estimated annual sales value

Approval authority	Administrative approval: Estimated annual sale instrument revenue	Technical and legal approval: Estimated annual sale instrument revenue		
Garrison commander	As delegated by the Army landholding command UtilSO <sup>1</sup>	As delegated by the Army landholding command UtilSO <sup>2</sup>		
Army landholding command UtilSO	Unlimited <sup>3</sup>	As delegated by the ADAPPO <sup>4</sup>		
ADAPPO/CEHNC utilities legal counsel	NA	Unlimited <sup>5</sup>		
DAPPO	guidance.	ation from, current Army utilities sale policy and coordination with ARSTAF and Assistant Secre-		

Certification authority	Utility Sales Rates Certification
RMO	Unlimited

Legend for Table 4-1:

ADAPPO — Assistant Deputy Army Power Procurement Officer

ARSTAF — Army Staff

CEHNC — U.S. Army Engineering and Support Center, Huntsville

DAPPO — Deputy Army Power Procurement Officer

NA — not applicable

RMO — resource management officer

UtilSO - utilities services officer

#### Notes:

- <sup>1</sup> Upon delegation by the Army landholding command UtilSO, delegation of administrative approval authority to the garrison commander is limited to sale instruments with a maximum of \$500,000 annual revenue per individual instrument.
- <sup>2</sup> Upon delegation by the Army landholding command UtilSO, delegation of technical and legal approval authorities to the garrison commander is limited to sale instruments with a maximum of \$500,000 annual revenue per individual instrument in CONUS, and any maximum delegated to the landholding command by the ADAPPO for OCONUS regions and facilities.
- <sup>3</sup> DAPPO has delegated unlimited administrative approval authority to the Army landholding command UtilSOs, with authority to redelegate this authority to the garrison commander for sale instruments with annual revenues of up to \$500,000.
- <sup>4</sup> ADAPPO may redelegate to the Army landholding command UtilSO, as appropriate, technical or legal approval authority for sale instruments with a maximum of \$500,000 annual revenue per individual instrument in CONUS, and any maximum in annual revenue per individual instrument for OCONUS regions and facilities.
- <sup>5</sup> DAPPO has delegated unlimited technical and legal approval authority to the ADAPPO/CEHNC utilities legal counsel. "Unlimited" includes all contracts above the Army landholding command UtilSO or the garrison commander's approval threshold authorities plus any technical and/or legal approvals or assistance requested by the garrison commander.
- e. The ASA (FM&C), their designee, in coordination with ASA (IE&E) and other affected parties within HQDA, may waive or reduce charges for utilities and related services when—
- (1) Furnishing of the service without charge is an appropriate courtesy to a foreign government or international organization, or comparable fees are set on a reciprocal basis with a foreign country.
- (2) The Director of the Office of Management and Budget (OMB) has approved a request for an exception. Such exceptions may be recommended when—
  - (a) The cost of collecting the charges would represent an unduly large part of the charge for the activity; or
  - (b) Any other conditions exists that, in the opinion of the ASA (FM&C) or their designee, justifies the exception.
- f. Waivers granted under paragraph 4-7e(1) will be renewed every 4 years to ensure that conditions warrant their continuation. Waivers granted under paragraph 4-7e(2) must be resubmitted for approval to the OMB every 4 years when conditions warrant their continuation. All request for waiver actions under paragraph 4-7e(2) will be coordinated, through Commercial Utilities Program and ASA (FM&C) command channels with the Under Secretary of Defense (Comptroller) prior to forwarding to the OMB. (See table 4-2.)

Table 4–2
Policy on waivers of or deviations from regulations and guidance for the sale of utilities and related services

Approval authority	Waiver					
Army landholding command UtilSO	As delegated by ADAPPO.					
ADAPPO	Changes and deviations to a contract's technical clauses that do not require a waiver of current policy and guidance.					
DAPPO	Waiver of, or deviations from, current Army sale of utilities and related services' policy and guidance.					
ASA (FM&C), or their designee, in coordination with ASA (IE&E) and other affected parties at HQDA.	May waive or reduce charges for utilities and related services as a courtesy to a foreign government or international organization, or comparable fees are set on a reciprocal basis with a foreign country.					
	The Director of the OMB has approved a request for an exception.					
Director of the Office of Management and Budget	Request for exceptions to waive or reduce charges for other conditions.					

Legend for Table 4-2:

ADAPPO — Assistant Deputy Army Power Procurement Officer

ASA (FM&C) — Assistant Secretary of the Army (Financial Management and Comptroller)

DAPPO — Deputy Army Power Procurement Officer

### 4-8. Utilities and related services unit cost rates

Unit cost rates for the sale of utilities and related services will be based on the estimated cost of performance prorated over the period of performance. These rates will be reviewed biannually—preferably annually—or whenever significant changes in cost or value occur. Individual rates for each customer class are determined by various DOD and Army financial and operational directives (see fig 4–1). These directives establish rates for the sale of utilities and related services to the following customers:

	Cost to the Federal Government						nt		
			Government-owned utility						1
		Cost of utility	generation and/or					Exclude common use	Fair
0	No	No commodity		infrastructure	market				
Customer	charge	acquisition	<u> </u>	M	LL	AOH	СС	cost	value
Intra-Army customers (see para 4-8a)	I		1		l			Ι	
<u>General</u>				-					
Financed by same Army appropriation as the host garrison, within S/CLS	х								
Financed by same Army appropriation as the host garrison, above S/CLS		х	х	х	х			х	
Financed by different Army appropriation as the host garrison		х	х	х	х			х	
Army NAF instrumentalities									
Category A	x			-					
Category B	×								
Category C	<del>  ^</del>		-	-					-
• CONUS			-						
				-					
- APF are authorized & available	X								
- APF are not authorized or available		X	×		X				
- Designated isolated remote locations	Х								
- FPCON Charlie or Delta	X								
OCONUS	х								
<ul> <li>Sewage, trash and garbage disposal (other services)</li> </ul>	x								
- MWR Program Group I	х								
- MWR Program Group II, III, IV, V, and VI									
+ APF are authorized & available	х								
+ APF are not authorized or available	_ ^_	х	х		х				
Golf courses			<u> </u>		_^_				
- CONUS		x	X		x				
- CONUS designated remote location	x	^	-						
- OCONUS	×			<u> </u>	<b></b>				
- Sewage, trash and garbage disposal (other	x								
services)  • Golf course structures									
- Golf club house	x								
- Cart storage building, maintenance sheds,	_ ^_			-					
pro shop									
+ CONUS		Х	Х		Х				
+ CONUS designated remote location	X								
+ OCONUS	Х								
+ Sewage, trash and garbage disposal (other services)	x								
AAFES									
- CONUS									
+ APF are authorized & available	х								
+ APF are not authorized or available		х	×		х				
+ Designated isolated remote locations	х								
+ FPCON Charlie or Delta	х								
+ Sewage									
= APF are authorized & available	х								
= APF are not authorized or avail.	_ ^_	x	x		x				
+ Trash and garbage disposal		x	X		X				
- OCONUS	X	^	<del>  ^</del>	<del> </del>					
- Military clothing sales stores (MCSS)	X		<del>                                     </del>	<del> </del>					-
MWR & AAFES contractors/concessionaires	<del>  ^</del>	Samo ADE	CURR	ort oc s	ctiviti a	0000	ated h	y the NAFI.	L
Government owned Army Family Housing						s oper	ateu D	y trie INAFI.	T
<del></del>		X	X <sub>rec.</sub> 4	X <sub>rec.</sub> 4	X		. 5		-
RCI and PAL Partnerships		X <sub>consumed</sub>	X <sub>R/P1</sub>	X <sub>R/P1</sub>	X	-	X <sub>R/P2</sub> °		
MEDCOM ARMO		X	X	X	Х	-		X	
ARNG		X	Х	X	Х			X	
USAR	X		1	1	1	1			1

Figure 4–1. Applicable unit cost rates charged by the Army to customers

			ost to	the F	edera	l Gove	rnme	nt	
			Cost to the Federal Government Government-owned utility					1	
		Cost of utility	generation and/or			Exclude	Fair		
	No	commodity	di	istribu	tion s	ystem	1, 2	common use Fair infrastructure market	
Customer	charge	1	0	м	LL	АОН	СС	cost	value
ROTC	J	q				1			1
Within S/CLS	х								
Above S/CLS		x	х	Х	Х			х	
ARSOF									
Within S/CLS	х								
Above S/CLS		х	х	Х	х			х	
Mission unique requirements		X	Х	Х	Х			х	
Other DOD (non-Army) and Federal agencies (see p	ara 4-8	b)							
<u>General</u>		x	Х	Х	Х			X	
Other DOD NAF instrumentalities	Foll	ow same guida	nce as	Army	NAF i	nstrum	entalit	ies in para. 4-8	a(2).
<u>Defense HUMINT Service</u>	х								
<u>DeCA</u>									
When DOD directly funds Army	х								
When DOD does not directly fund Army		X	Х	х	X			x	
DODDS located OCONUS									
OCONUS schools		X	Х	Х	х			x	
Used by non-DODDS organization/activities	Utilitie	s and related s							Other-
		Use	rs-Fac	ctor (O	UF) pe	er DOD	1342	.6-M	
School lunch program refuse collect./disposal	х								
Non-Federal organizations (see para 4-8c)									
<u>General</u>									
FMV (LPR) > Government cost									X
Government cost > FMV (LPR)		X	Х	Х	X	X	Х		
American National Red Cross									
Outgrant	х								
OCONUS w/COCOM CO/host nation concurrence	х								
Excessive consumption									
FMV (LPR) > Government cost						l			X
Government cost > FMV (LPR)		X	Х	х	x	X	Х		
Mission jeopardized									
<ul> <li>FMV (LPR) &gt; Government cost</li> </ul>									X
Government cost > FMV (LPR)		X	Х	х	X	X	Х		
<u>United Service Organizations</u>									
Outgrant	X								
OCONUS w/COCOM CO/host nation concurrence	X								
Excessive consumption									
FMV (LPR) > Government cost									X
Government cost > FMV (LPR)		Х	Х	X	X	X	Х		
Mission jeopardized						1			
<ul> <li>FMV (LPR) &gt; Government cost</li> </ul>									X
<ul> <li>Government cost &gt; FMV (LPR)</li> </ul>		X	Х	X	X	X	Х		
Armed Services YMCA									
Outgrant	X								
OCONUS w/COCOM CO/host nation concurrence	X								
Excessive consumption									
FMV (LPR) > Government cost									х
<ul> <li>Government cost &gt; FMV (LPR)</li> </ul>		X	Х	х	×	X	Х		
Mission jeopardized									
FMV (LPR) > Government cost									X
Government cost > FMV (LPR)		X	Х	х	х	Х	Х		
U.S. Scouting Organizations at Instal. Overseas									
When APF support is available	Х								
When no APF support is available									
<ul> <li>FMV (LPR) &gt; Government cost</li> </ul>									Х
<ul> <li>Government cost &gt; FMV (LPR)</li> </ul>		X	Х	Х	х	Х	Х		
Public/Private Utility Companies (see para 5-8c(6))									
FMV (LPR) > Government cost									х
Government cost > FMV (LPR)		X	Х	Х	х	Х	Х		
<u>Financial Institutions</u>									
Domestics banks									
<ul> <li>FMV (LPR) &gt; Government cost</li> </ul>							L		Х

Figure 4-1. Applicable unit cost rates charged by the Army to customers-Continued

	Cost to the Federal Government							nt	
	No	Cost of utility commodity	generation and/or distribution system <sup>1, 2</sup> common to		Exclude common use infrastructure	se Fair			
Customer		acquisition	0	м	LL	АОН	СС	cost	value
Government cost > FMV (LPR)		Х	Х	Х	х	х	Х		
Overseas MBF operated under contract									
When APF support is available	х								
When no APF support is available									
- FMV (LPR) > Government cost									Х
- Government cost > FMV (LPR)		х	Х	х	Х	Х	Х		
Other overseas banking offices									
FMV (LPR) > Government cost									х
Government cost > FMV (LPR)		х	Х	х	Х	х	Х		
Domestic credit unions									
Meeting 95% mil./Fed. Membership req.	Х								
<ul> <li>Not meeting 95% mil./Fed. Membership req.</li> </ul>									
- FMV (LPR) > Government cost									х
- Government cost > FMV (LPR)		х	Х	х	Х	х	х		
Overseas credit unions	Х								

Legend

AAFES — Army Air Force Exchange Service

AOH — Administrative overhead APF — appropriated funds ARNG — Army National Guard

ARSOF — Army Special Operation Forces

avail. — available
CC — Capital charges
CO — commander

COCOM — combatant command

collect. — collection

CONUS — continental United States
DeCA — Defense Commissary Agency
DOD — Department of Defense

DODDS — Department of Defense Dependents Schools

FMV — fair market value

FPCON — force protection condition HUMINT — Defense Human Intelligence

Instal. — Installation

LL — Distribution line loss (or gain in the case of sewage) adjustment.

LPR — local prevailing rate

M — Maintenance costs

MBF — military banking facilities

MCSS — military clothing sale store

MEDCOM — Army Medical Command

Mil./Fed. — Military/Federal

MWR — Morale, Welfare, and Recreation

NAF — nonappropriated fund O — Operation costs

OCONUS — outside the continental United States

OUF — Other-Users-Factor

PAL — Privatization of Army Lodging RCI — Residential Communities Initiative

req. — requirement

ROTC — Reserve officers' training Corps S/CLS — standard/common level of support

USAR — U.S. Army Reserve

Figure 4-1. Applicable unit cost rates charged by the Army to customers-Continued

### YMCA — Young Men's Christian Association

### Note:

- Army utility systems that have been privatized are not owned by the Army. See paragraph 4-10a for details.
- 2. See paragraph 4-10*b* for recovery of ESPC and UESC contracts costs directly related to government owned utility generation and/or utility external infrastructure.
- 3. X<sub>rec.</sub> Recurrent (normal preventive) operation and maintenance costs of the utility distribution system outside of the family housing areas, excluding major one-time or non-recurring cost of M&R projects.
- 4. X<sub>R/P1</sub> Direct incremental utility operations, maintenance, and system sustainment costs as a direct result of providing utilities services to either RCI or PAL projects.
- X<sub>R/P2</sub> Capital costs of utility capital projects initiated solely to meet an RCI or PAL utilities services requirements.

Figure 4-1. Applicable unit cost rates charged by the Army to customers-Continued

- a. Intra-Army customers.
- (1) General. AR 37–49 and memorandum, DAIM–ZA, 10 October 2002, subject: Status of Army Reimbursable Policy and the Army Baseline Services, provide the funding reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by intra-Army customers.
- (a) When the intra-Army customer is financed by the same Army appropriation as the host garrison for the identified standard/common level of support (S/CLS), utilities and related services will be furnished on a nonreimbursable basis. Utilities and related services are considered "must funds" by the Army and always considered part of the nonreimbursable S/CLS.
- (b) When the intra-Army customer is not financed by the same Army appropriation as the host garrison, utilities and related services will be furnished on a reimbursable basis and a support agreement or a MOU will be entered into.
- (c) Utilities and related services furnished at above S/CLS or to intra-Army customers not financed by the same appropriation as the host garrison will be reimbursed in incremental direct costs basis in accordance with DODI 4000. 19 reimbursement guidance. Unit cost rates for the sale of utilities and related services at above S/CLS or to intra-Army customers not financed by the same appropriation as the host garrison will be based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of the one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are non-reimbursable.
- (d) Exceptions to this general intra-Army utilities and related services reimbursement policy are listed in paragraphs 4–8a(2) through (9) of this section.
  - (2) Army nonappropriated fund instrumentalities.
- (a) The DODI 1015.10, DODI 1015.15, DODI 1330.21, AR 215–1, and AR 215–8 provide the funding reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by Army MWR activities to include AAFES. Table 4–3 provides a summary of DODI 1015.15, AR 215–1, and AR 215–8 funding guidance applicable to the sale of utilities and related services in effect at the time of this regulation publication. Consult reference publications and designated resource office for current funding guidance. Should any conflicts in funding guidance among DODI 1015.15, DODI 1330.21, AR 215–1, AR 215–8, and this regulation arise; DODI 1015–15, DODI 1330–21, AR 215–1, and AR 215–8 will control. The DODI 1015–15 and DODI 1330–21 will ultimately control whenever funding guidance is in conflict with AR 215–1, AR 215–8, and this regulation.

Table 4–3
Summarized funding guidance for the sale of utilities and related services to morale, welfare, and recreation Category C activities, to include Army and Air Force Exchange Service and their contractors and concessionaires

Applicability	Guidance	References
CONUS	Appropriated funds are authorized for utilities (electricity, gas, water, heat, steam, air conditioning, and other utility services for buildings on military installation) for CONUS MWR categories A, B, and C activities, to include AAFES (except for trash and garbage disposal), except for golf courses (unless located at a designated isolated remote location. See one block below).  Appropriated funds are authorized for sewage, trash, and refuse collection and disposal (considered as "other services" element of expense) for CONUS MWR categories A, B, and C, activities to include	DODI 1015.15, paragraphs 4.3, 6.2.1 6.2.1.3, and Enclosure 4.  AR 215–1, appendix D.  AR 215–8, paragraphs 3–2a, 3–3b, and appendix B.
	pense) for CONUS MWR categories A, B, and C activities, to include AAFES (except for AAFES trash and garbage disposal). Appropriated funds are not authorized for trash and garbage disposal at AAFES in CONUS.  Nonappropriated funds are authorized for CONUS MWR category C utilities (electricity, gas, water, heat, steam, air conditioning, and other utility services for buildings on military installation) costs when	
	APF are not available.  Nonappropriated funds are not authorized for sewage, trash, and refuse collection and disposal for CONUS MWR Program Group I activities. Nonappropriated funds are authorized for sewage, trash, and refuse collection and disposal for CONUS MWR Program Groups II, III, IV, V, and VI activities when APF are not available or sufficient.	
	Nonappropriated funds are authorized for AAFES trash and refuse collection and disposal in CONUS. Appropriated funds are authorized at designated isolated remote locations in CONUS.	
CONUS golf courses	Appropriated funds are not authorized for utilities for golf courses or golf course structures other than golf club houses inside the United States except those designated by the Secretary of Defense as a remote and isolated location in accordance with 10 USC 2491a.	DODI 1015.15, paragraphs 4.3, 6.2.1 3, and Enclosure 4.  AR 215–1, appendix D.
	Appropriated funds are not authorized for utilities for cart storage buildings, maintenance sheds, and pro shops inside the United States even if part of golf club house.	
	<b>Note:</b> Trash and refuse collection and disposal are not considered utilities for NAFI activities.	
OCONUS	Nonappropriated funds are not authorized for categories A, B, or C costs OCONUS.	DODI 1015.15, paragraphs 4.3, 6.2.1 3, and Enclosure 4.
	Appropriated funds are authorized at designated isolated remote locations in OCONUS.	AR 215–1, appendix D. AR 215–8, appendix B.
Military clothing sales stores	Military clothing sales stores are APF activities managed by the AAFES director and chief executive officer, pursuant to applicable departmental regulations and the MOU between AAFES and the military departments. Army guidance is that the military departments will reimburse AAFES for all costs associated with military clothing sales stores construction, facility improvement, operation, and management as stipulated in the respective Service's MOU.	AR 215–8, paragraph 6–7.
MWR and AAFES contractors or concessionaires	A NAFI contractor or concessionaire selling or providing authorized services is authorized the same APF support as activities operated	DODI 1015.15, paragraph 6.2.8.
	by a NAFI.	DODI 1330.21, paragraph 6.9.
	Nu ABE	AR 215–8, paragraph 7–12b(3).
Nonavailability of APF	When APF are not available for MWR Category C activities, to include AAFES, then AR 215–1 paragraph 5–14b and AR 215–8 paragraph 3–3b require the garrison's utilities services officer to obtain a	DODI 1015.15, paragraphs 4.3, 6.2.1. 3, and Enclosure 4.
	Certificate of Non-Availability from the responsible resource office.	AR 215–1, paragraph 5–14b.
		AR 215–8, paragraph 3–3b.

Table 4–3
Summarized funding guidance for the sale of utilities and related services to morale, welfare, and recreation Category C activities, to include Army and Air Force Exchange Service and their contractors and concessionaires—Continued

Applicability	Guidance	References
Utilities services rates	Utilities services charges will not include incremental or prorated share of overhaul, maintenance, and repair to utility systems or capital investments in the installation's utility infrastructure systems, un-	DODI 1015.15, paragraphs 4.3, 6.2.1. 3, and Enclosure 4.
less otherwise specified in sales agreements, MOAs, or inter- support agreement. See AR 420–41 pertaining to sales agre and Director of Public Works reimbursable support.		AR 215–1, appendix D. AR 215–8, appendix B.
		7 11
	<b>Note:</b> Funding guidance does not exclude the charging of operation costs or the consumption adjustment for losses in transmission.	
Force protection conditions Charlie and Delta	During force protection conditions at Charlie and above, MWR Category C programs, excluding golf courses, are authorized additional APF support for civilian personnel with installation management and supervisory functions (excluding personnel directly and primarily involved in resale), utilities and rents, and custodial and janitorial services. (See "CONUS golf courses" block above.)	DODI 1015.15, paragraph 6.2.2.3.4, and Enclosure 4; AR 215–1, paragraph 5–6 and appendix D; and AR 215–8, appendix B.

Legend for Table 4-3:

AAFES - Army and Air Force Exchange Service

AR — Army regulation

CONUS — continental United States

DODI — Department of Defense Instruction

MOA — memorandum of agreement

MWR — morale, welfare, and recreation

NAFI — nonappropriated funds instrumentalities

OCONUS — outside the continental United States

- (b) When APF are authorized (in accordance with DODI 1015.15, DODI 1330–21, AR 215–1, and AR 215–8, as applicable) and available, Army garrisons and facilities will provide utilities and related services to Army MWR Category C instrumentalities, to include AAFES, on a nonreimbursable basis. APF are considered available in the fiscal year of execution when the installation resource office has submitted specific NAFI requirements in the program objective memorandum process that includes the fiscal year of execution and requirements were validated.
- (c) When NAFs are authorized, or APF are not authorized or are certified to be not available, Army garrisons and facilities will charge Army NAF MWR Category C activities customers, to include AAFES, for provided utilities and related services. Unit cost rates for the sale of utilities and related services to Army MWR Category C and AAFES activities, concessionaires, and golf courses through their NAF instrumentality will be based on the purchased utility commodity cost, losses in transmission, and incremental direct costs associated with the operation of the utility system (garrison's utility generating system and/or distribution system). Unit cost rates charged will not include incremental or prorated share of overhead, maintenance, and repair to utility systems, or capital investments in the garrison's utility infrastructure systems unless otherwise specified by a sales agreement, MOA, MOU, inter-service, or intragovernmental support agreement.
- (d) A NAFI contractor or concessionaire (MWR and AAFES contractor or concessionaire contractor) selling or providing authorized services is authorized the same APF support as activities operated by a NAFI. Army garrisons will provide utilities and related services to MWR and AAFES contractors and concessionaires under the same terms and conditions as furnished to the MWR activity or AAFES that is being supported by the contractor or concessionaire. Sales of utilities and related services to MWR and AAFES contractors and concessionaire contractors will be accomplished through the sales contract form DA Form 2099 (Contract for Sale of Utilities Services).
  - (3) Government-owned Army family housing.
- (a) AR 420-1 provides the reimbursement authority and policy for the reimbursement of utilities and related services by AFH.
- (b) Unit cost rates for the sale of utilities and related services to AFH will be based on the purchased utility commodity cost, losses in transmission (gains in the case of sewage), and direct costs associated with normal (recurrent) operation and maintenance of the utility distribution system outside of the family housing areas, excluding major one-time or nonrecurring cost of M&R projects. (Costs of both major one-time and recurring M&R projects for the portions of the distribution system within the family housing areas are not included in the utilities unit cost rates and charged directly to AFH.)
- (c) See AR 420-1 for policy, responsibilities, utilities rates or charges included, and metering requirements in AFH rentals or leases.
  - (4) Residential Communities Initiative and Privatization of Army Lodging Partnerships.

- (a) Both 10 USC 2872a and OASA (IE&E) memorandum, dated November 26, 2012, provide the reimbursement authority and policy for the host garrison provision of utilities and related services to RCI and PAL partnerships.
- (b) The RCI and PAL partnerships will be charged for the actual utilities commodity usage costs and any incremental costs incurred for operation maintenance and system sustainment, as a direct result of providing utilities services to either RCI or PAL projects. All utility system capital investments that are determined necessary within the Army's area of responsibility (as defined by RCI and PAL project's points of utility demarcation) will be programmed and funded centrally by HQDA, to include both project costs to correct identified system deficiencies, and repair and restoration upgrades to accomplish periodic life cycle infrastructure replacements. These costs will not be billed to RCI and PAL projects. Any capital project initiated solely to meet an RCI or PAL requirement will have its cost billed to the RCI and PAL project. Unit cost rates for the sale of utilities and related services to RCI and PAL partnerships will be based on—
  - 1. Purchased utility commodity cost.
  - 2. Losses in transmission (gains in the case of sewage).
- 3. Direct incremental utility operations, maintenance, and system sustainment costs as a direct result of providing utilities services to either RCI or PAL projects.
  - 4. Capital costs of utility capital projects initiated solely to meet an RCI or PAL utilities services requirement.
  - (c) Additional RCI and PAL partnerships utility reimbursement policy guidance can be found in AR 420-1.
- (d) Sales of utilities and related services to the RCI and PAL partnerships will be accomplished through the Army RCI and PAL partnerships municipal services agreement or through the sales contract DA Form 2099.
  - (5) U.S. Army Medical Command.
- (a) DOD 7000.14–R, Volume 12, Chapter 21, and DODI 4000.19 provide the reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by MEDCOM.
- (b) The MEDCOM organizations are funded from Defense Health Program appropriations and reimburse for all direct incremental support costs as defined in DODI 4000.19. Unit cost rates for the sale of utilities and related services to MEDCOM will be based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are nonreimbursable.
  - (6) Army National Guard.
- (a) The October 2002 Army Reimbursable Policy provides utilities and related services reimbursement policy for ARNG.
- (b) The ARNG will reimburse host garrisons for utilities and related services no matter where they are located. Reimbursement will be based on identifiable incremental direct costs. Unit cost rates for the sale of utilities and related services to ARNG will be based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of the one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are non-reimbursable.
  - (7) Army Reserve.
- (a) The October 2002 Army Reimbursable Policy provides the USAR's utilities and related services reimbursement policy.
  - (b) The USAR receives utilities and related services on a nonreimbursable basis.
  - (8) Reserve Officers' Training Corps.
  - (a) The October 2002 Army Reimbursable Policy provides the utilities and related services policy for the ROTC.
- (b) ROTC receives S/CLS utilities and related services on a nonreimbursable basis. Above S/CLS, the ROTC will reimburse for utilities and related services on an incremental-costs basis. Unit-cost rates for the sale of utilities and related services to the ROTC will be based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of the one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are nonreimbursable.
  - (9) Army Special Operations Forces.
  - (a) The October 2002 Army Reimbursable Policy provides the utilities and related services policy for ARSOF.
- (b) The ARSOF receives S/CLS utilities and related services on a nonreimbursable basis. The Army Special Operation Forces will reimburse for mission-unique requirements, as well as above S/CLS utilities and related services on an incremental costs basis. Unit cost rates for the sale of utilities and related services to ARSOF will be based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides

support solely for the benefit of the one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are nonreimbursable.

- b. Other Department of Defense (non-Army) and Federal agencies.
- (1) General
- (a) DODI 4000.19 provides the reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by other DOD (non-Army) and Federal customers.
- (b) Unit cost rates for the sale of utilities and related services to other DOD (non-Army) and Federal agencies will be based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of one or more DOD (non-Army) and Federal agency and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are nonreimbursable.
  - (c) Exceptions to this general reimbursement policy are listed in paragraphs (2) through (5) of this section.
  - (2) Other Department of Defense nonappropriated fund instrumentalities.
- (a) The DODI 1015.10, DODI 1015.15, and DODI 1330.21 provide the reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by DOD MWR activities.
  - (b) Follow the same guidance as Army NAFI in paragraph 4-8a(2).
- (3) Defense Human Intelligence Service. No charge. The DODI 4000.19 does not apply to Defense HUMINT Service (DHS) customer units supported by Army installations due to the consolidation of the Defense HUMINT Service in 1995 under the Defense Intelligence Agency. The Deputy Secretary of Defense Memorandum, dated 16 March 1995, provides the reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by the DHS. Army garrisons and facilities will provide utilities and related services to DHS and family and bachelor housing for DHS personnel at no charge, regardless of which military service.
  - (4) Defense Commissary Agency.
- (a) Both 10 USC 2483 and DODI 1330.17 require the use of APF designated for the operation of DeCA and the defense commissary system to cover the utilities and related services costs of DeCA, commissary stores, and central processing facilities. The cost of electricity, heat, steam, water, ice, oil, gas, coal, compressed air, air-conditioning, and refrigeration for commissaries and store-level offices dedicated to commissary operations will be paid by direct citation. Utilities and related services should be metered at the point of service to the commissary. However, in the absence of meters, estimates may be used. Such estimates will be based on the contract cost of utilities and related services and prorated according to the size of the commissary. Estimates may be determined at Department of the Army level or at the installation garrison level.
- (b) When DOD provides funding to the Department of the Army to cover the utilities and related services costs of DeCA, commissary stores, and central processing facilities; Army garrisons and facilities will provide utilities and related services to DeCA, commissary stores, and central processing facilities at no charge.
- (c) When no funding is provided by DOD, the garrison will charge DeCA, commissary stores, and central processing facilities unit cost rates for the sale of utilities and related services based on the purchased utility commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of the one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure cannot be reimbursed.
  - (5) Department of Defense Dependents Schools located outside the continental United States.
- (a) The DODD 1342.20, DOD 1342.6–M, Appendix 2 and DODI 4000.19 provide the reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by DODDS located OCONUS.
- (b) Unit cost rates for the sale of utilities and related services to OCONUS schools will be based on the purchased commodity cost plus the incremental direct cost associated with operation, maintenance, and losses (or gains in the case of sewage) in transmission of the Army-owned external utility infrastructure that provides support solely for the benefit of the OCONUS school and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to the operation and maintenance of Government-owned common use infrastructure are nonreimbursable. Utility costs and consumptions may be factored with the formulas provided in DOD 1342.6–M, paragraphs AP4.2.15 and 17 to reflect costs for use of the utilities and related services during the school day.
- (c) When the school facilities are used by organizations and/or activities other than the DODDS, the costs of utilities and related services will be reduced by the applicable other-users factor. For determination of the other-users factor, see DOD 1342.6–M, paragraph C3.1.6.
  - (d) Refuse collection and disposal for the school lunch program is not chargeable to the DODDS.
  - c. Non-Federal organizations.

- (1) General.
- (a) 10 USC 2686 and DOD 7000.14–R, Volume 11A, provide the general reimbursement authority and policy for the host garrison provision of utilities and related services consumed or to be consumed by non-Federal organizations.
- (b) Unit cost rates for the sale of utilities and related services to non-Federal organizations will be based on the total cost to the Army or FMV (local prevailing rate), whichever is higher. Total cost to the Army will lbe based on the purchased commodity cost plus the direct and indirect costs associated with operation, maintenance, losses in transmission (gains in the case of sewage), administration (administrative overhead), and needed fixed assets (capital charges) of the Army-owned external utility infrastructure.
- (c) Rates based on total cost to the Government will be calculated using the best available cost data for providing the utility or related service in the projected period of performance.
- (d) Fair market value charges may exceed the recovery of costs to the Army and may produce net revenues to the Government.
  - (e) In a regulated environment, FMV will be determined for-
- 1. Garrisons bordered by one franchised utility service provider, in accordance with that provider's applicable utility rate schedule for the specific customer of utilities and related services. The applicable utility rate schedule will be the lowest cost available to the customer.
- 2. Garrisons bordered by multiple franchised utility service providers, in accordance with the closest provider's applicable utility rate schedule for the customer of utilities and related services. The applicable utility rate schedule will be the lowest cost available to the customer.
- (f) In a nonregulated environment, FMV will be determined in accordance with the average of utility unit cost rates in the local market area. In the absence of known market value, charges will be determined based on recovery of full costs to the Army.
  - (g) Example of customers under this classification are as follows:
  - 1. Lessees of industrial facilities used by lessees for private commercial purposes.
  - 2. MCA contractors.
  - 3. SRM contractors.
  - 4. Off-post non-Federal customers (subject to para 4–2 requirements).
- a. Municipalities and utility companies that on an emergency or temporary basis request the Army to provide utilities to them.
  - b. Commercial businesses.
  - c. Private residents.
  - 5. Other customers that do not fall in any of the other classifications or exceptions.
  - (h) Exceptions to this general reimbursement policy are listed in paragraphs (2) through (6) of this section.
  - (2) American National Red Cross.
- (a) The March 2009 Memorandum of Understanding Between the United States Department of Defense and the American Red Cross, DOD 5500.7–R, and AR 930–5 provide the reimbursement policy for the host garrison provision of utilities and related services consumed or to be consumed by the ARC at Army installations.
- (b) Garrison commanders may provide reasonable utilities and related services support to ARC without reimbursement as part of the "out grant" (for example: lease or license) for the use of real property facilities on the installation. Utilities and related services support level must be commensurate with the level of services the ARC intends to provide at the installation. Utilities and related services support to ARC will not degrade the installation mission. For real property management policy and guidance, see DODI 4165.70 and AR 405–80.
  - (c) Support to ARC outside the United States.
- 1. Before granting permission to the ARC to use facilities at installations outside the United States, the garrison must obtain the concurrence of the regional combatant commander in whose area of responsibility the installation is located, and the permission of the host nation if required by any applicable international agreement or by other applicable law.
- 2. Before granting permission to the ARC to use facilities at sites outside of the United States not located on an installation, the Army garrison providing base support to the site must obtain the concurrence of the regional combatant commander in whose area of responsibility the site is located, and the permission of the host nation if required by any applicable international agreement or by other applicable law.
- (d) When the garrison commander does not authorize the furnishing, or portion, of the utilities and related services to the ARC on a nonreimbursable basis (for example: furnishing utilities and related services on a nonreimbursable basis jeopardizes the installation mission, and excessive consumption in comparison to ARC support), the garrison will document the decision and charge the ARC the highest between the utilities and related services local prevailing rate applicable to the ARC and the government cost (utility commodity costs, government owned generating and/or distribution system operation and maintenance, losses in transmission (gain in the case of sewage), administrative overhead, and capital charge).
  - (3) United Service Organizations.

- (a) The January 2008 MOU between the DOD and the USO, the DOD 5500.7–R, and AR 930–1 provide the reimbursement policy for the host garrison provision of utilities and related services consumed or to be consumed by the USO.
- (b) Garrison commanders may provide reasonable utilities and related services support to USO without reimbursement, as long as similar support is provided to similar MWR facilities, as part of the outgrant (such as lease or license) for the use of real property facilities on the installation. Utilities and related services support level must be commensurate with the level of services the USO intends to provide at the installation. Utilities and related services support to USO will not degrade the installation mission. For real property management policy and guidance, see DODI 4165.70 and AR 405–80.
  - (4) Armed Services Young Men's Christian Association.
- (a) The December 2004 MOU between the DOD and the ASYMCA, as well as DOD 5500.7–R, provide the reimbursement policy for the host garrison provision of utilities and related services consumed or to be consumed by ASYMCA.
- (b) When an on-installation ASYMCA center has been appropriately approved, utilities and related services may be provided, without reimbursement, when a determination has been made that such support is to the benefit of the Armed Services
  - (c) Utilities and related services support may only be authorized and provided when-
  - 1. The support in question is within the capability of the appropriate commander;
  - 2. It can be offered without detriment to the commander's ability to fulfill the military mission;
- 3. The support is permitted under applicable international agreements or status of forces agreements or similar applicable agreements (such as Defense Cooperation Agreements);
  - 4. The support is permitted under the provisions of DOD 5500.7-R; and
  - 5. The support is documented in a written agreement, approved by the garrison commander.
- (d) When the garrison commander does not authorize the furnishing, or portion of, the utilities and related services to the ASYMCA on a nonreimbursable basis (such as when furnishing utilities and related services on a nonreimbursable basis jeopardizes the installation mission, or creates excessive consumption in comparison to ASYMCA support), the garrison will document the decision and charge the ASYMCA the highest between the utilities and related services local prevailing rate applicable to the ASYMCA and the government cost (utility commodity costs, Government-owned generating and/or distribution system operation and maintenance, losses in transmission (gain in the case of sewage), administrative overhead, and capital charge).
- (5) U.S. scouting organizations at Army controlled installations located overseas. The DODI 1015.9 and AR 210–22 provide the reimbursement policy for the host garrison provision of utilities and related services consumed or to be consumed by scouting organizations. The Boy Scouts of America and the Girl Scouts of the United States of America are organizations chartered by the Federal Government. The President of the United States has determined that the Secretary of Defense's cooperation with, and assistance to, qualified scouting organizations in establishing and providing facilities and services, within available resources, at locations outside the United States is necessary in the interest of the morale, welfare, and recreation of DOD personnel and their families. In conformance with DODI 1015.9, APF may be used to provide utilities services to these overseas scouting organizations on a nonreimbursable basis.
  - (6) Public or private utility companies.
- (a) Generally, the FMV price (or local prevailing rate) that would be applicable to a public or private utility company should be the average wholesale price of selling that particular utility service in the area.
- (b) When selling utilities or related services to a public or private utility company under the authority of 10 USC 2686, ensure compliance with paragraph 4-2 and follow guidance on paragraph 4-8c(1).
- (c) When selling electrical energy generated from alternate energy or cogeneration type production facilities that are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary of the Army to a public or private utility company under the authority of 10 USC 2916, follow guidance in paragraph 4-8c(1), ensuring that the electric energy sale rate is also consistent with 16 USC 2601 et seq.
- d. Financial institutions. DOD 7000.14-R, Volume 5, Chapter 34, provides the reimbursement policy for the host garrison provision of utilities and related services consumed or to be consumed by financial institutions.
- (1) Domestic banks. Banking institutions will pay for all utilities (such as electricity, natural gas or fuel oil, water, and sewage), heating and air conditioning, and custodial and janitorial services to include garbage disposal at rates set forth in the lease, operating agreement or other written agreement between the installation and the banking institution. In banking construction projects, the banking institution will be responsible for utility connections and other utility and maintenance costs.
- (2) Overseas military banking facilities operated under contract. Given that APF support those MBFs that are operated under contract, installation or community commanders will provide the MBFs utilities and related services support (such as electricity, natural gas or fuel oil, water and sewage, heating and air conditioning, and custodial and janitorial services to include garbage disposal) to the maximum possible extent.
  - (3) Other overseas banking offices. Utilities and related services provided to such offices will be negotiated with the

parent foreign banking institution and incorporated into the written operating agreement. Utilities and related services will not exceed those provided to overseas MBFs operated under contract.

- (4) Domestic credit unions with 95 percent membership in military personnel or Federal employees, or members of their families. When available, utilities and related services will be furnished without cost to credit unions occupying no-cost office space in government buildings. The provision of no-cost office space for a period not to exceed 5 years is limited to credit unions if at least 95 percent of the membership to be served by the allotment of space is composed of individuals who are, or who were at the time of admission into the credit union, military personnel or Federal employees, or members of their families. Should a credit union fail to meet the 95 percent membership criterion, any utilities and related services furnished will be on a reimbursable basis.
- (5) Overseas credit unions. Army garrisons and facilities will provide utilities and related services to overseas credit unions.

# 4-9. Working capital funds garrisons' utilities support to other Department of Defense and Federal agencies

The charges for the sale of utilities and related services from working capital funds (WCF) garrisons will be based on the approved stabilized rate. The WCF garrisons will charge other DOD and Federal agencies utility unit cost rates based on the purchased commodity cost, plus the incremental direct cost associated with operation, maintenance, losses (or gains in the case of sewage) in transmission, administration (including administrative overhead), and needed fixed assets (capital charges) of the Army-owned external utility infrastructure. This infrastructure must provide support solely for the benefit of the one or more customers and that the garrison has not been funded through other APF or other funding instruments. Indirect costs and direct costs related to Government-owned common use utility infrastructure are nonreimbursable, except for those indirect costs included in the stabilized rates charged for WCF mission products and services (under DODI 4000.19 and DOD 7000.14–R).

# 4-10. Other related costs' applicability

- a. Utilities privatization costs. Reimbursement of utilities privatization costs applies to those customers where DOD and/or Army regulations require the reimbursement for utilities services. Privatization contractors' incremental operation and maintenance contract costs will be included in charges to customers since these are normal operation and maintenance costs of the privatized system, which are needed for the furnishing of the utility service. Privatization contractor's construction improvements cost that would have been considered MILCON projects if the Army would have pursued the improvement will be included as a capital charge, when applicable.
- b. Energy savings performance contract/utility energy services contract costs. Garrisons may want to recover energy savings performance contract (ESPC) costs or utility energy services contract (UESC) costs directly related to government owned utility generation and/or utility external infrastructure from applicable or affected reimbursable customers. To do this, they can include the directly related ESPC and/or UESC costs into the utility sale rate, if the garrison has negotiated ESPC and/or UESC savings baselines with the applicable or affected reimbursable customers.

# 4-11. Use of utility meters

Installations are required to install meters to capture actual utility usage by reimbursable customers (42 USC 8253(e)(1) requires that electricity at all Federal buildings be metered by 1 October 2012, and that natural gas and steam be metered not later than 1 October 2016; DODI 4170.11 requires that by 2012, electricity, natural gas, and water will be metered on appropriate facilities, and steam will be metered at steam plants; and 10 USC 2867(a) requires DOD to adopt departmentwide, open protocol, energy monitoring and utility control system specification to account for utilities and energy usage among other purposes). Metered utility consumption will provide the most creditable billing invoice for customers. Costs of providing meters to Government facilities will be borne by the garrison unless exempted by other applicable regulations. Costs of providing meters to non-Government facilities will be borne by the customer unless exempted by other applicable regulations. For Army policy and guidance concerning metering requirements on post, see AR 420–1. For Army policy and guidance concerning AFH metering requirements, see AR 420–1. For AAFES metering requirements, see AR 215–8.

### 4-12. Sales instrument preparation and forms

- a. All sales instruments will be prepared in accordance with paragraph 4-2d of this regulation.
- b. The forms to be used in the sale of utilities and related services are discussed in appendix B.
- c. The prescribed forms collect signatures and other potentially sensitive information involved in the sale of utilities and related services. Contracting Officers will ensure that the maintenance, use and dissemination of those forms comply with applicable Army Freedom of Information Act and Privacy Act regulations and guidance.

# 4-13. Post-award contract administration

The administrative contracting officer and the garrison UtilSO, as applicable, will—

a. Ensure that reimbursement for the sale of utilities and related services contracts are made in a timely manner.

- b. Prepare monthly utilities sale invoices in accordance with the requirements of the DOD and Army financial management regulations and applicable Army guidance.
- c. In coordination with the RMO as appropriate, conduct review, at least annually, of utilities sale accounts in accordance with the requirements of applicable Army guidance, particularly as to rates and the continued necessity and appropriateness of the sale. Rates should be adjusted annually or whenever significant changes in cost or value occur. Reviews may be performed more frequently at the discretion of the contracting officer and/or garrison UtilSO, as warranted.
  - d. Document the certification of annual reviews and the update of sale instruments information.

### 4-14. Modifications and terminations

- a. Intra-Army, Department of Defense, and other Federal agencies. When practical, support agreement modifications and terminations should be made bilaterally and with sufficient advance notification to permit appropriate resource adjustments to be made during the budget formulation process. If an inter-service support agreement must be unilaterally terminated, suspended, or significantly modified with less than 180 days' notice to other parties of the agreement, the unilateral party may be billed by affected parties for reimbursement of unavoidable termination or reprocurement expenses incurred up to 180 days following the written notification. The 180 day limits and requirement to reimburse for reprocurement expenses do not apply to intragovernmental support agreements, and reimbursement for termination costs are subject to negotiation.
- b. Non-Federal organizations. Contract modifications and terminations should be made bilaterally and with sufficient advance notification to permit appropriate resource adjustments to be made during the budget formulation process. Unilateral termination, suspension, or significantly modification of a contract require at least 30 days notice to other parties of the agreement, unless otherwise negotiated.

# 4-15. Disputes

- a. Intra-Army, Department of Defense, and other Federal agencies. Unresolvable differences concerning support agreements will be elevated for resolution through each activity's chain of command. Unresolvable disputes among military departments, defense agencies, and other Federal activities will be mediated by a representative of the Office of the Assistant Secretary of Defense.
- b. The residential communities initiative and privatization of Army lodging partnerships. The Army and the RCI lessee or entity and PAL partner have 90 calendar days to facilitate resolution of all outstanding issues following the expiration date of an agreement. If the Army and the RCI lessee or entity and PAL partner are unable to agree to the terms of a municipal services agreement, or to the methodology and process used to determine reimbursable amounts for commodity, operations and maintenance, and R&R costs, the parties will elevate the issue(s) through the chain of command. In no event will a dispute remain unresolved for longer than 180 calendar days from the expiration date of such an agreement.
- c. Non-Federal organizations. Contracts for the sales of utilities and related services to non-Federal organizations are subject to 41 USC Chapter 71.

# 4-16. Debts collection

- a. Debts owed by contractors. For debt owed by contractors, see Department of Defense Financial Management Regulation, Volume 10, Chapter 18.
- b. Debts owed by U.S. Government activities. For debts owed by U.S. Government activities, see Department of Defense Financial Management Regulation, Volume 4, Chapter 3.
- c. Debts owed by non-U.S. Government organizations. For debts owed by non-U.S. Government organizations, see Defense Finance and Accounting Service-Indianapolis Center Regulation 37–1.

# 4-17. Army Utilities Services Acquisition and Sale Specialist Training and Certification Program

Subject to availability of funds, the DAPPO will sponsor and develop the necessary training to provide basic and advance knowledge and skill to the Army utilities contracting community (Army contracting, legal, and public works staffs) for the effective and efficient performance of the acquisition and sales of utilities services (see para 3–11).

### 4-18. Technical assistance

The ADAPPO and the Army landholding command UtilSO will provide upon request overall technical assistance to the garrisons and USACE districts, as applicable. Requests for technical assistance should be initiated as early as possible during project development and in accordance with Army guidance.

# Appendix A References

#### Section I

# **Required Publications**

A required publication is a source the user needs to understand this regulation. Army publications are available on the Army Publishing Directorate Web site at http://www.apd.army.mil. Department of Defense publications are available at http://www.dtic.mil/whs/directives. Code of Federal Regulations and the United States Codes are available at http://www.gpo.gov/fdsys. The Federal Acquisition Regulation is available at https://www.acquisition.gov/FAR/.

#### **AFARS Part 5141**

Acquisition of Utility Services (Cited in paras 2-4a, 3-2a.) (Available at http://www.army.mil/asaalt/.)

### AR 27-40

Litigation (Cited in para 2-10.)

### AR 37-49

Budgeting, Funding, and Reimbursement for Base Operations Support of Army Activities (Cited on the title page and para 4–8a(1)).

### AR 190-13

The Army Physical Security Program (Cited in para 3-2r.)

#### AR 190-51

Security of Unclassified Army Property (Sensitive and Nonsensitive) (Cited in para 3-2r.)

#### AR 210-22

Private Organizations on Department of the Army Installations (Cited in para 4-8c(5).)

#### AR 215–1

Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities (Cited in paras 4–8a(2)(a), 4–8a(2)(b), table 4–3, and 4–11.)

### AR 215-8

Army and Air Force Exchange Service Operations (Cited in paras 4-8a(2)(a), 4-8a(2)(b), table 4-3, and 4-11.)

### AR 420-1

Army Facilities Management (Cited in paras 2–5, 2–7d, 3–1b(3), 3–2n, 3–10, 4–2d, 4–4c(2), 4–8a(3)(a), 4–8a(3)(c), 4–8a(4)(c), and 4–11.)

#### AR 930-1

Army Use of United Service Organizations Inc., Services (Cited in para 4–8c(3)(a).)

# AR 930-5

American National Red Cross Service Program and Army Utilization (Cited in para 4-8c(2)(a).)

# Army Reimbursable Policy, October 2002

Memorandum, DAIM–ZA, 10 October 2002, Subject: Status of Army Reimbursable Policy (ARP) and the Army Baseline Services (Cited in title page, paras 4–6, 4–8a(1), 4–8a(6)(a), 4–8a(7)(a), 4–8a(8)(a), and 4–8a(9)(a)). (Availble at http://asafm.army.mil/offices/BU/ArmyReimbPolicy.aspx?OfficeCode=1200).

### DA Pam 190-51

Risk Analysis for Army Property (Cited in para 3-2r.)

# DA GO 2012-01

Assignment of Functions and Responsibilities within Headquarters, Department of the Army (Cited in paras 2–1, 2–2, 2–3, 2–4, and 2–5.)

### **DFARS Part 241**

Acquisition of Utility Services (Cited in para 3-2a.) (Available at http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.)

### **DFARS PGI 241.103**

Statutory and delegated authority (Cited in paras 3–2l(6), 3–2m.) (Available at http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.)

# **DFARS PGI 241.205**

Separate contracts (Cited in paras 3-2k, 3-2l(1).) (Available at http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.)

### **DFARS Section 217.174**

Multiyear contracts for electricity from renewable energy sources (Cited in para 3–3g.) (Available at http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.)

### **DFAS 37-1**

Debts Owed by Public Organizations Other Than U.S. Government Activities (Cited in para 4-16c.)

#### DOD 1342.6-M

Administrative and Logistic Responsibilities for DOD Dependents Schools (Cited in paras 4–8b(5)(a), 4–8b(5)(b), and 4–8b(5)(c).)

### DOD 4140.25-M

DOD Management of Bulk Petroleum Products, Natural Gas, and Coal, Volume III (Cited in paras 2-7b(10), 3-2d, and 3-2f.)

#### DOD 5500.7-R

Joint Ethics Regulation (Cited in paras 4-8c(2)(a), 4-8c(3)(a), and 4-8c(4)(c)(4).)

### DOD 7000.14-R

Department of Defense Financial Management Regulation (Cited on the title page and paras 4-1c, 4-8a(5)(a), 4-8c(1)(a), 4-8d, 4-9, and the glossary). (Cited in paras , , , , , 4-13b.)

### **DODI 1015.9**

Professional United States Scouting Organization and Operations at United States Military Installations Located Overseas (Cited in para 4–8c(5).)

#### **DODI 1015.10**

Programs for Military Morale, Welfare, and Recreation (MWR) (Cited in paras 4-8a(2)(a), 4-8b(2)(a).)

### **DODI 1015.15**

Procedures for Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources (Cited in paras 4–8a(2)(a), 4–8a(2)(b), 4–8b(2)(a), and table 4–3.)

#### DODI 1330.21

Armed Services Exchange Regulations (Cited in paras 4-8a(2)(a), 4-8b(2)(a), and table 4-3.)

### **DODI 4000.19**

Support Agreements (Cited in paras 4-8b(3), 4-8a(1)(c), 4-8a(5)(a), 4-8a(5)(b), 4-8b(1)(a), 4-8b(5)(a), and 4-9.)

### **DODI 2000.12**

DOD Antiterrorism (AT) Program (Cited in para 3-2r.)

#### **DODI 2000.16**

DOD Antiterrorism (AT) Standards (Cited in para 3–2r.)

### **DODI 4170.11**

Installation Energy Management (Cited in paras 3–2d, 4–11.)

### FAR Part 6

Competition Requirements (Cited in para 3–2g.)

#### FAR Part 7

Acquisition Planning (Cited in paras 3–2g, 3–2p.)

### FAR Part 12

Acquisition of Commercial Items (Cited in para 3-2a.)

#### FAR Part 13

Simplified Acquisition Procedures (Cited in para 3–2a.)

### FAR Part 14

Sealed Bidding (Cited in para 3-2a.)

#### FAR Part 15

Contracting by Negotiation (Cited in para 3-2a.)

#### FAR Part 16

Types of Contracts (Cited in para 3-2a.)

#### FAR Part 17

Special Contracting Methods (Cited in para 3-2a.)

#### FAR Part 23

Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace (Cited in para 3–2a.)

### FAR Section 23.103

Sustainable acquisitions (Cited in para 3–1a(3).)

### FAR Part 41

Acquisition of Utility Services (Cited in paras 2-6e(2)(a), 3-2a.)

### FAR Section 41.202

Procedures (Cited in para 3–2g.)

### FAR Section 41.401

Monthly and Annual Review (Cited in paras 3-2j, 3-2k, 3-8b, 3-8c, and C-4h.)

### FAR Section 41.702

Formats for Annual Service (Cited in paras 3-2j, 3-2k.)

#### FAR Section 52.241

Utility Services Provisions and Clauses (Cited in paras 3-4b(1)(c), 3-4d(2)(c).)

# FAR Subpart 17.5

Interagency Acquisitions (Cited in para 3–2b.)

### FAR Subsection 52.241-6

Service Provisions (Cited in para 3-7a.)

Memorandum, Assistant Secretary of the Army for Installations, Energy, and Environment, November 26, 2012 Utility and Services Reimbursement Policy for Residential Communities Initiative (RCI) and Privatization of Army Lodging (PAL) partnerships - Policy Memorandum #5 (Cited in para 4–8a(4)(a).)

Memorandum, Assistant Secretary of the Army for Installations, Energy, and Environment, May 24, 2012 Department of the Army Policy for Renewable Energy Credits (Cited in para 3–3f.) (Available at http://army-energy.hqda.pentagon.mil/policies/docs/May2012\_Renewable\_Energy\_Credits\_Policy.pdf.)

# Memorandum, Assistant Secretary of the Army for Installation and Environment, July 19, 2010

Department of the Army Guidance for Energy Related Projects and Services (Cited in paras 3–1a(4), 3–1a(5).) (Available at http://www.asaie.army.mil/Public/ES/doc/Guidance%20for%20Energy%20Related%20Projects%20and%20Services%2019%20Jul%202010.pdf.)

# Renewable Energy Requirement Guidance for EPACT 2005 and Executive Order 13423

Department of Energy, January 28, 2008 (Cited in para 3–3f.) (Available at http://www1.eere.energy.gov/femp/pdfs/epact05\_fedrenewenergyguid.pdf.)

#### 10 USC 2410a

Multiyear contracts: purchase of electricity from renewable energy sources (Cited in paras 3-2l(4), 3-3g.)

#### 10 USC 2686

Utilities and services: sale; expansion and extension of systems and facilities (Cited in paras 4-1a, 4-4a, 4-8c(6)(b), and 4-8c(1)(a).)

### 10 USC 2805

Unspecified minor construction (Cited in paras 3-2n, 3-4c(2), 3-4b(2)(a)2, and 3-4d(5), 4-4c(2).)

# 10 USC 2911

Energy performance goals and master plan for the Department of Defense (Cited in para 4-4b(2).)

### 10 USC 2916

Sale of electricity from alternate energy and cogeneration production facilities (Cited in paras 4-1a, 4-3, 4-4c, 4-8c(6)(c).)

# 10 USC 2919

Department of Defense participation in programs for management of energy demand or reduction of energy usage during peak periods (Cited in para 3-1b(3).)

### 16 USC 2601 et seq

Public Utility Regulatory Policies (Cited in paras 4–3, 4–8c(6)(c).)

# 25 USC 3501 et seq

Indian Energy (Cited in para 3-1b(2)(c).)

### 42 USC 8253

Energy management requirements (Cited in para 3–1b(1) and table 3–1.)

#### 42 USC 15852

Federal purchase requirement (Cited in paras 3-1b(2), 3-2l(4), 3-3g, and table 3-2.)

### Section II

# Referenced Forms

A related publication is a source of additional information. The user does not have to read a related reference to understand this regulation. AFARS, DFARs, and FAR is available at http://farsite.hill.af.mil/vfdfara.htm. DOD publications are available at http://www.dtic.mil/whs/directives. Code of Federal Regulations and the USCs are available at http://www.gpo.gov/fdsys.

### **AFARS Section 5101.402(1)**

Deviations From the FAR - Policy

### AFARS Section 5101.403

Deviations From the FAR - Individual Deviations

### **AFARS Part 5110**

Market Research.

#### AFARS Section 5152.241

Utility Services Provisions and Clauses

### AR 11-2

Managers' Internal Control Program

#### AR 25-30

The Army Publishing Program

### **DAGO 2010-25**

Redesignation of the Assistant Secretary of The Army (Installations and Environment) as the Assistant Secretary of the Army (Installations, Energy And Environment)

### **DFARS Section 201.402(1)**

Deviations from the FAR - Policy

### DFARS Section 201.404(b)

Deviations from the FAR - Class Deviations

### **DFARS Section 252.241**

Acquisition of Utility Services

### **Executive Order 13423**

Strengthening Federal Environmental, Energy, and Transportation Management, January 26, 2007

### **Executive Order 13514**

Federal Leadership in Environmental, Energy, and Economic Performance, October 5, 2009

### FAR Part 30

Cost Accounting Standards Administration

### FAR Section 3.104

Procurement Integrity

# FAR Subpart 27.4

Rights in Data and Copyrights

### FAR Subpart 31.1

Contract Cost Principles and Procedures - Applicability

# FAR Subpart 31.2

Contract Cost Principles and Procedures - Contracts with Commercial Organizations

### FAR Part 32

Contract Financing

### FAR Subpart 32.1

Non-Commercial Item Purchase Financing

# FAR Subpart 32.7

Contract Funding

# FAR Subpart 32.8

Assignment of Claims

#### PL 109-58

Energy Policy Act of 2005 (Available at http://thomas.loc.gov/.)

# PL 110-140

The Energy Independence and Security Act of 2007 (Available at http://thomas.loc.gov/.)

# Principles of Federal Appropriations Law, Third Edition, Volume I, Chapter 5, Section B.9.c.

(Available at http://www.gao.gov/legal/redbook/redbook.html/.)

### 10 USC 2304

Contracts: competition requirements

#### 10 USC 2396

Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries

### 10 USC 2491a

Department of Defense golf courses: limitation on use of appropriated funds

#### 10 USC 2494

Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes

### 10 USC 2688

Utility systems: conveyance authority

### 10 USC 2867

Energy monitoring and utility control system specification for military construction and military family housing activities

### 10 USC 2872a

Utilities and services

### 10 USC 2922a

Contracts for energy or fuel for military installations

### 16 USC 2621

Consideration and determination respecting certain ratemaking standards

### 31 USC 1535

Agency agreements

### 40 USC 501

Services for executive agencies

# 41 USC Chapter 71

Contract Disputes

### 42 USC 8253

Metering of energy use deadline

### Section III

### **Prescribed Forms**

Except where otherwise indicated below, the following DA forms are available on the APD Web site (http://www.apd. army.mil)

### DA Form 2099

Contract for Sale of Utilities Services (Prescribed in paras 4–8a(2)(d), 4–8a(4)(d), B–1a, B–2a, B–2c, and the glossary.)

### **DA Form 2100**

Memorandum of Understanding for Sale of Utilities and Related Services (Prescribed in paras B-1b, B-2b, B-2c, and the glossary.)

### **DA Form 2101**

Special Provisions A(S) Electric Service (Prescribed in paras B-1c, B-2b, B-2c.)

### DA Form 2102

Special Provisions B(S) Gas Service (Prescribed in paras B-1d, B-2b, B-2c.)

### **DA Form 2103**

Special Provisions C(S) Water Service (Prescribed in paras 4-8a(2)(d), 4-8a(4)(d), B-1a, B-2a, B-2c, and the glossary.)

### DA Form 2104

Special Provisions D(S) Sewage Service (Prescribed in paras B-1f, B-2b, B-2c.)

#### **DA Form 2105**

Special Provisions E(S) Steam Service (Prescribed in paras B-1g, B-2b, B-2c.)

#### **DA Form 2106**

Special Provisions F(S) Refuse Collection and Disposal Service (Prescribed in paras B-1h, B-2b, B-2c.)

### **DA Form 7683**

Special Provisions G(S) Hot Water Service (Prescribed in paras B-1i, B-2b, B-2c.)

#### **DA Form 7684**

Special Provisions H(S) Fuel Oil Service (Prescribed in paras B-1j, B-2b, B-2c.)

#### **DA Form 7685**

Special Provisions I(S) Compressed Air Service (Prescribed in paras B-1k, B-2b, B-2c.)

#### **DA Form 7686**

Special Provisions J(S) Ice Service (Prescribed in paras B-11, B-2b, and B-2c.)

#### **DA Form 7687**

Special Provisions K(S) Chilled Water Service (Prescribed in paras B-1m, B-2a, and the glossary.)

### **DA Form 7688**

Special Provisions L(S) Liquefied Propane Gas (LPG) Service (Prescribed in paras B-1n, B-2b, and B-2c.)

### Section IV

# **Referenced Forms**

Except where otherwise indicated below, the following forms are available as follows: DA Forms are available on the APD Web site (http://www.apd.army.mil) and DD Forms are available on the Office of the Secretary of Defense Web site (http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm).

### **DA Form 11-2**

Internal Control Evaluation Certification

#### DA Form 2028

Recommended Changes to Publications and Blank Forms

### **DD Form 1144**

Support Agreement (Available at http://www.dtic.mil/whs/directives/infomgt/forms/index.htm.)

#### DD Form 1391

(FY \_\_\_\_ Military Construction Project Data)

### Appendix B

# Preparation of Sales Instruments

# B-1. Availability of sale instrument forms

The forms listed below are prescribed for use in the sale of utilities and related services. These forms are available at http://www.apd.army.mil/Forms/browse\_forms.asp.

- a. DA Form 2099.
- b. DA Form 2100 (Memorandum of Understanding for Sale of Utilities and Related Services).
- c. DA Form 2101 (Special Provisions A(S) Electric Service).
- d. DA Form 2102 (Special Provisions B(S) Gas Service).

- e. DA Form 2103 (Special Provisions C(S) Water Service).
- f. DA Form 2104 (Special Provisions D(S) Sewage Service).
- g. DA Form 2105 (Special Provisions E(S) Steam Service).
- h. DA Form 2106 (Special Provisions F(S) Refuse Collection and Disposal Service).
- i. DA Form 7683 (Special Provisions G(S) Hot Water Service).
- j. DA Form 7684 (Special Provisions H(S) Fuel Oil Service).
- k. DA Form 7685 (Special Provisions I(S) Compressed Air Service).
- l. DA Form 7686 (Special Provisions J(S) Ice Service).
- m. DA Form 7687 (Special Provisions K(S) Chilled Water Service).
- n. DA Form 7688 (Special Provisions L(S) Liquefied Propane Gas (LPG) Service).

# B-2. Use of utilities and related services contract or memorandum of understanding forms

- a. DA Form 2099 will be used for sales to all customers other than the Federal Government and NAFI activities. General provision 1 through 15 on DA Form 2099 will be used for all sales contracts. Provisions for local conditions will be recorded in additional clauses to general provisions.
- b. DA Form 2100 or DD Form 1144 (Support Agreement) will be used for all sales to Federal Government agencies and NAFI activities. DD Form 1144 may be used in lieu of DA Form 2100 at the discretion of the garrison UtilSO. When DD Form 1144 is used, all general provisions shown on DA Form 2100 and the technical information shown in DA Forms 2101 through 212106 or DA Forms 7683 through 7688, any as applicable, will be included by reference to or attached to the DD Form 1144.
- c. DA Forms 2101 through 2106 and DA Forms 7683 through 7688 are for use as attachments to DA Form 2099 or DA Form 2100, as required. Additional clauses may be added for local conditions and to protect the Government and keep record of the transaction. When more than one service is supplied to a single customer, all the applicable special provisions will be attached to one contract or MOU, as applicable.

# Appendix C Internal Control Evaluation

#### C-1. Function

The function covered by this evaluation is the acquisition and sale of utilities and related services.

## C-2. Purpose

The purpose of this evaluation is to assist garrison public works and installation contracting personnel in evaluating the key internal controls listed below. It is not intended to cover all controls.

### C-3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies must be explained and corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

# C-4. Test questions for the acquisition of utilities services

- a. Are the garrison's utilities acquisition sustainable requirements taken into consideration in developing the garrison's master plan?
- b. Does the procurement of utility services support the Army renewable energy goals and foster energy and water conservation, security, sustainability, and the protection and improvement of the environment?
- c. Is the purchase of RECs being discouraged, unless considered to make an energy project feasible in accordance with Army guidance?
- d. Is a utilities contracting team—consisting of the contracting officer, applicable utilities services officers, the CEHNC utilities legal officer or the applicable contracting legal counsel—formed and getting involved early in the initial utility acquisition project stage?
- e. If a waiver or deviation from Army utilities services acquisition policy and guidance, or the FAR or any of its supplements, is needed in a utility acquisition action, is the garrison properly requesting, justifying, and obtaining approval of the waiver or deviation from the proper waiver authority listed in paragraph 3–4 (or table 3–6), before executing the acquisition action?
- f. Are the applicable solicitation provisions and contract clauses being incorporated into utility services solicitations and contracts, as required by FAR Subparts 41.5 and 52.3, and DFARS Subpart 241.5?
- g. Are any advanced payments made for utility services limited to a utility service account activation or initiation fee, membership fee, security deposit, and/or connection charge? Is such advanced payment regulated by a utility regulatory body, or is it customary in the region and generally charged to all customers of the utility company or supplier?
- h. Are monthly and annual reviews of utility acquisition accounts conducted in accordance with FAR Section 41.401 to ensure that existing utility purchase contracts are still valid and operative?
- *i.* Are utility use patterns and load characteristics reviewed on a periodic basis to ensure the most advantageous rate schedules are applied?
- j. Are contractor's notifications of future utility rate changes, together with a garrison impact assessment, being reported or forwarded immediately through the proper chain of command to the ADAPPO and the ARL&IPO?
- k. Are rate and charge adjustments approved by the public utility commissions reviewed to determine the potential final impacts to the garrison?
- *l.* Do utility service invoices, vouchers, or billing comply with the terms of contract? Are copies of the contract and receiving report (or equivalent documents) attached to certified utility service vouchers?
- m. Are utility service contracts and their modifications being reviewed and approved by the proper administrative, technical, and legal authorities based on the contract's annual cost threshold, specified in paragraph 3–4 (or table 3–5)?
  - n. Are monthly and annual utility consumption and charges reported?

### C-5. Test questions for the sale of utilities and related services

- a. Are the garrison's utilities and related services sales' sustainable requirements taken into consideration in developing the garrison's master plan?
- b. If a waiver or deviation to Army utilities and related services sale policy and guidance is needed in a utilities and related services sale action, is the garrison properly requesting, justifying, and obtaining approval of the waiver or deviation from the proper waiver authority listed in paragraph 4–7 (or table 4–2), before executing the sale action?
- c. Are the sales of utilities and related services meeting the preconditions for consideration of sale, stated in paragraph 4–2a?

- d. Are the sales of utilities and related services to non-Federal customers outside the installation (off-post) being limited to the maximum extent possible?
- e. When an off-post sale is justified, is the off-post sale of utilities and related services to non-Federal customers meeting the preconditions for consideration of sale, as well as the considerations for off-post sale as stated in paragraph 4–2? Is the off-post sale being approved by the DAPPO before executing the utilities and related services contract?
- f. Are monthly and annual reviews conducted to ensure that existing utilities and related services sale instruments are still valid and operative?
- g. Are utilities and related services sale invoices, vouchers, or billing being issued to the garrison's reimbursable customers on a periodic (usually monthly) basis?
- h. Do utilities and related services invoices, vouchers, or billing comply with the terms of the utilities sale instruments?
- *i.* Are the utilities and related services instruments and their modifications being reviewed and approved by the proper administrative, technical, and legal authorities based on the sale instrument revenue threshold specified in paragraph 4–7 (or table 4–1)?
  - j. Are utilities' reimbursable customers' monthly and annual utility consumption and charges reported?
- k. Are utilities and related services sale rates being reviewed at least biannually (preferably annually) and certified by the resource management officer to ensure that only authorized costs are included in computing the utilities and related services sale rates?

# C-6. Supersession

This evaluation replaces the evaluation for Facilities Support/Electric Services/Utilities Contracts previously published in DA Circular 11–87–4.

### C-7. Comments

Help make this a better tool for evaluating internal controls. Submit comments to Headquarters, U.S. Army Corps of Engineers (CEMP-CI), 441 G Street N.W., Washington, DC 20314–1000.

# **Glossary**

### Section I

# **Abbreviations**

# **AAFES**

Army and Air Force Exchange Service

#### ABS

Army baseline services

# **ACC**

Army Contracting Command

### **ACOM**

Army command

# **ACSIM**

Assistant Chief of Staff for Installation Management

### **ADAPPO**

Assistant Deputy Army Power Procurement Officer

# **AFARS**

Army Federal Acquisition Regulation Supplement

### **AFH**

Army family housing

### APF

appropriated funds

# **APPO**

Army Power Procurement Officer

### AR

Army regulation

# **ARC**

American National Red Cross

# ARL&IPO

Army Regulatory Law and Intellectual Property Office

### **ARNG**

Army National Guard

# **ARSOF**

Army special operations forces

### **ARSTAF**

Army Staff

# ASA (ALT)

Assistant Secretary of the Army for Acquisition, Logistics and Technology

# ASA (FM&C)

Assistant Secretary of the Army (Financial Management and Comptroller)

# ASA (IE&E)

Assistant Secretary of the Army (Installations, Energy and Environment)

# ASCC

Army service component command

### **ASYMCA**

Army Services Young Men's Christian Association

### **CEHNC**

U.S. Army Engineering and Support Center

### COE

Chief of Engineers

### **CONUS**

continental United States

### DA

Department of the Army

### DA GO

Department of the Army General Orders

#### DAPPO

Deputy Army Power Procurement Officer

### **DeCA**

Defense Commissary Agency

#### DFARS

Defense Federal Acquisition Regulation Supplement

### **DFAS**

Defense Finance and Accounting Service

#### DHS

Defense Human Intelligence Service

### DLA

Defense Logistics Agency

#### DOD

Department of Defense

# **DODDS**

Department of Defense Dependents Schools

### DODI

Department of Defense instruction

#### DRU

direct reporting unit

# **DSNG**

direct supply natural gas

### EO

executive order

# **EPA**

energy purchase agreement

### **ESPC**

energy savings performance contract

### **FAR**

Federal Acquisition Regulation

### **FMV**

fair market value

### **FPMA**

Federal Power Marketing Administration

### **GSA**

General Services Administration

### **HODA**

Headquarters, Department of the Army

### **HUMINT**

human intelligence

### LDC

local distribution company

### **LPG**

liquefied propane gas

#### M&R

maintenance and repair

# **MBF**

military banking facility

# MCA

military construction, Army

### **MEDCOM**

U.S. Army Medical Command

# **MILCON**

military construction

# MOA

memorandum of agreement

### MOU

memorandum of understanding

#### MWR

morale, welfare, and recreation

# NA

not applicable

### **NAF**

nonappropriated fund(s)

# **NAFI**

nonappropriated fund instrumentalities

### OASA (IE&E)

Office of the Assistant Secretary of the Army for Installations, Energy and Environment

### **OCONUS**

outside the continental United States

# ODASA (P)

Office of the Deputy Assistant Secretary of the Army for Procurement

### ODUSD (I&E)

Office of the Deputy Under Secretary of Defense for Installations and Environment

#### OMA

operations and maintenance, Army

#### OMR

Office of Management and Budget

# OUSD (AT&L)

Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)

#### PAI

privatization of Army lodging

### PGI

procedures, guidance, and information

#### **PPA**

power purchase agreement

### **RCI**

residential communities initiative

# REC

renewable energy certificate

### **RMO**

resource management officer

#### ROTO

Reserve Officers' Training Corps

### S/CLS

standard/common level of support

#### **SRM**

sustainment, restoration, and modernization

#### SUMO

services' utilities management officer

# **TJAG**

The Judge Advocate General

### **TVA**

Tennessee Valley Authority

# **USACE**

U.S. Army Corps of Engineers

### USAR

U.S. Army Reserve

#### USC

United States Code

### **UESC**

utility energy services contract

#### **USO**

United Service Organizations

#### **UtilSO**

utilities services officer

### WCF

working capital funds

### Section II

**Terms** 

# Administrative approval (under the context of this regulation)

Review and business clearance approval of contract for conformance with Army utilities contracting procedures.

# Army landholding commands

ACOMs, ASCCs, or DRUs having landholding responsibilities. As of the time of this regulation issuance, the Army landholding commands are the U.S. Army Installation Management Command, U.S. Army Materiel Command, Army National Guard Bureau, and the U.S. Army Reserve Command.

# Citygate

The point at which a distribution gas company receives gas from a pipeline company.

### Common use infrastructure

Roads, grounds, surfaced areas, structures, real property and installed equipment directly associated with the installation's utility generation and/or distribution system that is used to provide utility services to more than one customer type (customarily nonreimbursable).

#### **Electricity**

The generation, transmission, and distribution of electric current as a source of power.

### **Energy intensity**

Energy consumption per square foot of building space, including industrial or laboratory facilities.

# Energy related project

Project that consist of one or a combination of the following: the construction of a power generation facility on an Army installation; the execution of a multiyear energy service or power purchase agreement solely or via UESC; ESPC, or an enhanced use lease; renewable energy and alternative energy projects; or any other multiyear energy production or energy purchase agreement regardless of the location of the energy production facility.

### External utilities infrastructure

Government owed utility generation and/or distribution infrastructure outside the five feet building demarcation.

# Fair market value and/or fair value

Fair market value (also known as fair value) is an unbiased, equitable or just value based on the cost of a similar asset or the price that an impartial buyer would be willing to pay for the asset or a similar asset (see DOD 7000.14–R).

# Federal Power Marketing Administration Agencies

The FPMA agencies are Bonneville Power Administration (BPA), Southeastern Power Administration (SEPA), Southwestern Power Administration (SWPA), and Western Area Power Administration (WAPA).

#### Fuel

Anything that can be consumed to produce various energy or utility forms used for space heating, water heating, and steam generation among others; for example, coal, oil, gas (natural, manufactured, and liquefied petroleum), wood, and electricity.

### Incremental direct cost

The cost of resources directly consumed by an individual activity that would not have been consumed if the individual activity were not performed. A cost that is specifically identified with a single cost object (see DODI 4000.19).

# Independent regulatory body

Independent regulatory body means the Federal Energy Regulatory Commission, a Statewide agency, or an agency with less than Statewide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers. (See DFARS 241.101)

### **Indirect cost**

The cost of resources, including overhead, that support more than one cost object (in other words, not consumed by a single cost object) (see DODI 4000.19).

# **Intragovernmental support**

Support provided by a DOD activity to a non-DOD Federal activity and vice versa — does not include support provided to or received from foreign governments (see DODI 4000.19).

### **Interservice support**

Support provided by one DOD activity to a DOD activity of another Military Service, Defense Agency, Unified Combatant Command, the Army Reserves, Navy Reserves, Air Force Reserves, Marine Corps Reserves, Air National Guard, or Field Activity (see DODI 4000.19).

# Life cycle costs (under the context of this regulation)

The sum of the present values of all utility acquisition costs to be incurred during the contract economic life. Utility acquisition costs include contracting costs; utility commodity costs; utility transportation costs; any applicable utility facility charges; any applicable utility connection charges; and any additional government owned capital, operation, maintenance, and administrative costs needed for the utility acquisition. In a regulated environment, the life cycle costs will also consider projected rate changes during the contract economic life.

### Life cycle cost-effective (under the context of this regulation)

The life cycle costs of a proposed utility service acquisition are estimated to be equal or less than the life cycle costs of the present utility service acquisition for the contract economic life.

### Load aggregation

Combining utility services needs of two or more account holders into a single entity to negotiate more advantageous pricing from supplier.

# Local prevailing rate

The rate a customer would be charged at the utility designated customer class of service if the service could had been obtained directly from the installation's utility supplier or the nearest supplier.

# Losses in transmission (gains in the case of sewage)

Refers to the losses and gains (infiltration) in the government owned utility transmission/distribution lines. Losses usually occur in electric power, gas, water, hot water, steam, compressed air, and mechanical refrigeration or air conditioning central plants lines. Gains usually occur in sewage collection lines. No line losses or gains are associated with ice, garbage, and refuse disposal.

#### Market research

Analyses of underlying supply and demand factors to determine various utilities pricing schemes and evaluate strategies for procurement options.

## **Minor construction**

Scope of new construction or project for making physical improvements to existing real property not exceeding \$750, 000 that is not classified as maintenance or repair.

#### New renewable sources

New renewable sources means sources of renewable energy placed into service after January 1, 1999 (see EO 13423).

### Nonindependent regulatory body

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, for example, a municipal utility (see DFARS 241.101).

#### Other users factor

The percentage by which engineering, custodial, refuse collection, real property rental, utilities and other costs will be reduced by the supporting installation to compensate for the use of school facilities by organizations and/or activities other than the DODDS.

### Renewable energy

Renewable energy means energy produced by solar, wind, biomass, landfill gas, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project (see EOs 13423 and 13514).

# Renewable energy certificates

Also known as green tags, green energy certificates, or tradable renewable certificates. RECs represent the technology and environmental attributes of electricity generated from renewable sources. RECs are usually sold in 1 megawatthour (MWh) units. A certificate can be sold separately from the underlying generic electricity with which it is associated. Once the REC is sold separately from the underlying electricity, the electricity is no longer considered renewable. RECs provide buyers flexibility to offset a percentage of their annual electricity use when green power products may not be available locally.

#### Sale instruments

DA Form 2099, DA Form 2100, and DD Form 1144.

### Sewage

The wastewater and other liquefied matter from domestic, commercial, and industrial activities disposed through various sewer infrastructures and treatment facilities. Sewage rate is prorated charge based on the initial capital costs, operations and maintenance, and other allowable cost elements.

#### Sole source

Awarding contracts to a vendor without seeking competitive solicitations from multiple bidders. Typically, justifications are needed to award a sole source contract.

# Standard and/or common levels of support

The funded quality, quantity, frequency or timeliness (the required outcome for the customer) of an installation support service provided within available resources and Army priorities to all applicable customers. This refers to the typical installation support performed by an installation supplier without a payment required from the customer. An additional quality, quantity, frequency or timeliness of a commonly provided installation support service (such as additional days of custodial service) is called "increased levels of service" or "above CLS services." Installations are not funded to provide increased levels of support.

### Technical approval (under the context of this regulation)

Review and approval of contract terms, conditions, and technical specifications or requirements for properness, fairness, and conformance with utility contracting statutes and regulations.

# **United States scouting organizations**

Boy Scouts of America and Girl Scouts of the United States of America affiliated organizations authorized to operate on DOD installations in foreign areas.

# Utilities and related services (for resale purpose only)

All inclusive services (infrastructure, commodities, and customer services) to provide electric power, steam, heat, hot water, water, compressed air, gas (natural, manufactured, liquefied petroleum, or mixed), fuel oil, ice, air conditioning, mechanical refrigeration, sewage, garbage, and refuse disposal.

# **Utility services (purchase)**

Electricity, natural or manufactured gas, water, sewage, thermal energy, chilled water, steam, hot water, high temperature hot water, and other such utility services not subject to the Service Contract Act of 1965.

# Water consumption intensity

Water consumption per square foot of building space.

# Section III Special Abbreviations and Terms

# **DLA-Energy**

Defense Logistics Agency-Energy