

VOLUME 12, CHAPTER 11: “PRIVATIZATION OF DEFENSE UTILITY SYSTEMS”

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [***bold, italic, blue and underlined font***](#).

The previous version dated [August 2019](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, and format to comply with current revised guidance.	Revision
3.2.4.1	Defined the Military Services responsibility to ensure accurate transactional input to the Defense Finance and Accounting Service for reporting.	Addition

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CHAPTER 11

PRIVATIZATION OF DEFENSE UTILITY SYSTEMS

1.0 GENERAL

1.1 Purpose

This chapter prescribes financial management policies to the implementation of statutory provisions of Title 10, United States Code, section 2688 ([10 U.S.C. § 2688](#)), “Utility Systems: Conveyance Authority.” Section 2688 permits the Secretary of a Military Department to convey (i.e., transfer or pass title to) a utility system, or part of a utility system, under the Secretary’s jurisdiction to a municipal, private, regional, district, or cooperative utility company, or other entity (this authority does not apply to utility projects constructed or operated by the Army Corps of Engineers under its civil works authority). A utility system is defined as any system used for the: (1) generation and supply of electric power, steam, hot water, or chilled water; (2) supply of natural gas; (3) treatment or supply of water; (4) collection or treatment of wastewater; or (5) transmission of telecommunications. The term “utility system” also includes the following: (A) equipment, fixtures, structures, and other improvements utilized in connection with a utility system as defined and (B) real property, easements, and rights-of-way associated with a utility system as defined.

1.2 Authoritative Guidance

The financial management policies in this chapter correspond with the Department of Defense ([DoD Instruction 4170.11](#), *Installation Energy Management*). The Instruction specifies that utilities privatization “is the preferred method for modernizing and recapitalizing DoD utility systems. “To this end, the Instruction provides: “Except where the Secretary of the Military Department has certified that the systems are exempt due to security reasons, or where privatization is uneconomical, the Military Services must attempt to privatize those types of utility systems at every Active and Reserve Component installation within and outside the United States that is not designated for closure under a base closure law.” This guidance also assigns the office of primary responsibility for the Instruction to the Under Secretary of Defense for Acquisition and Sustainment. [10 U.S.C. § 2925](#) defines the annual reporting requirements related to Installations Energy Management, Energy Resilience, and Mission Assurance.

2.0 CONVEYANCE OF UTILITY SYSTEMS

2.1 Consideration and Determination

Subsection 2688(c)(1) of 10 U.S.C. provides that the Secretary of a Military Department concerned may require as consideration for a conveyance an amount for the value (as determined by the Secretary) the right, title, or interest conveyed. Such consideration may take the form of a reduction in charges for future utility services or a lump sum payment. Subsection 2688 does not itself constitute authority for the Secretary of a Military Department to

convey a utility system without any consideration or cause to be inapplicable to authorities that govern disposal of DoD real property and personal property. **The Secretary concerned** may authorize a contract for utility services to have a term in excess of 10 years, but not to exceed 50 years. The determination of cost effectiveness must be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract. The business case analysis must also demonstrate how a privatized system will operate in a manner consistent with energy resilience and cybersecurity requirements and associated metrics provided to the conveyee to ensure that the reliability of the utility system meets mission requirements.

2.2 Reduction in Charges

A reduction in charges for future utility services is acceptable consideration when the services are provided by the utility or entity obtaining the utility and the reduction in charges is provided to the military installation at which the utility system is located at the time of conveyance. In such circumstances, a reduction in charges for utility services is an exchange of dissimilar assets that does not result in a credit to an appropriation. The consideration (reduction) in such an exchange is considered an Other Asset (Account 199000), and the recorded asset is reduced by charges to Operating Expenses/Program Costs (Account 610000) over the life of the contract for utility services. Corresponding asset disposal losses must be recognized as described in Volume 4, Chapter 17.

2.3 Lump Sum Payment

2.3.1. Provisions of 10 U.S.C. § 2688 provide that any lump sum cash payment received as consideration for the sale of a utility system must be credited, at the election of the Secretary concerned, to an appropriation of the Military Department available for:

2.3.1.1. The procurement of the same utility services as are provided by the utility system conveyed;

2.3.1.2. Carrying out energy savings or water conservation projects (as discussed in Chapter 12); or

2.3.1.3. Improvements to other utility systems.

2.3.2. A lump sum payment must be credited to the appropriation used to fund the types of base operating support costs described in subparagraph 2.3.1 at the location of the privatized utility system. In most cases, this will be an Operations and Maintenance appropriation. Approval of the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)), Program/Budget (P/B) is required for the use of any other appropriation type, as described in paragraph 3.2.

2.3.3. The amount credited to an appropriation must be merged with the funds in that appropriation and must be available for obligation in the same period, for the same purposes, and subject to the same conditions and limitations as that appropriation. There is no provision in the statute for extending the availability of such funds beyond the normal expiration date of the appropriation.

2.3.4. The conveyance of a utility for a lump sum payment results in budgetary and proprietary accounting entries by the entity responsible for collection as follows:

2.3.4.1. Receipt of a lump sum payment is recorded in the budgetary accounts as an earned reimbursement, as described in Volume 3, Chapter 15.

2.3.4.2. Receipt of a lump sum payment for the conveyance of a utility is recorded in the proprietary accounts as a gain or loss on disposition of assets, as described in Volume 4, Chapter 17.

3.0 CONVEYANCE AUTHORIZATION AND AGENDA

3.1 Same Utility Service Procurements

Before utility conveyance proceeds may be used to procure the same utility services as those provided by the utility system conveyed, the organization receiving the funds must submit the proposed distribution of funds to the Assistant Secretary of a Military Department (Financial Management and Comptroller) (ASMD(FM&C)) for approval. The ASMD(FM&C) must notify the supporting Defense Finance and Accounting Service (DFAS) site of approved funds distributions.

3.2 Savings and Conservation Projects and Improvements

3.2.1. Receiving Organization. Before utility conveyance proceeds may be used for carrying out energy savings or water conservation projects or improvements to other utility systems, the receiving organization must:

3.2.1.1. Prepare and submit to ASMD(FM&C) – for each major construction, minor construction, emergency construction, or Federal Energy Management Program project - the budget estimate data required by Volume 2B, Chapter 6, using Department of Defense Form 1391 ([DD Form 1391](#)), “FY__ Military Construction Project Data.”

3.2.1.2. Ensure the required approval and funding authorization is received before the disbursement of funds.

3.2.1.3. Prepare the paperwork necessary for the disbursement of funds in accordance with Volume 5, Chapter 9.

3.2.1.4. Ensure any amount credited to an appropriation from a conveyance under 10 U.S.C. § 2688, is administered in accordance with the financial policy and guidance in Volume 3, Chapter 15.

3.2.2. The ASMD(FM&C). Before approving a receiving organization's request to carry out energy savings or water conservation projects or improvements to other utility systems, ASMD(FM&C) must:

3.2.2.1. Review the receiving organization's proposal submitted under subparagraph 3.2.1.1, and forward it to OUSD(C), P/B, Directorate for Military Personnel and Construction, for final approval.

3.2.2.2. Ensure required OUSD(C), P/B approval and funding authorization are received before the disbursement of funds is approved.

3.2.2.3. Provide funds control and reporting information to the supporting DFAS site.

3.2.2.4. Notify the receiving organization of the final decision and provide the funding authorization document.

3.2.3. The OUSD(C), P/B, Directorate for Military Personnel and Construction

3.2.3.1. Before approving an ASMD(FM&C) request to carry out energy savings or water conservation projects or improvements to other utility systems, OUSD(C), P/B must:

3.2.3.1.1. Review the receiving organization's proposal submitted under subparagraph 3.2.1.1.

3.2.3.1.2. Prepare and submit any necessary apportionment and reappropriation schedule using the most current version of Standard Form 132, "Apportionment and Reappropriation Schedule," (e.g., for urgent unforeseen projects not already included in the Military Construction program) to the Office of Management and Budget (OMB) for approval.

3.2.3.1.3. Notify the ASMD(FM&C) of the final decision and OMB approval, and provide the funding authorization document.

3.2.3.2. Provide funds control and reporting information to Washington Headquarters Service (for Department-level appropriation accounting).

3.2.4. The DFAS

* 3.2.4.1. The Military Services are responsible for ensuring that all funding authorization documents and expenditure transactions are complete, and accurately reported to the DFAS Departmental Reporting System, Budgetary (DDRS-B).

3.2.4.2. The Director, DFAS, must account for and report to OMB and the U.S. Department of the Treasury on amounts credited to appropriations resulting from a conveyance under 10 U.S.C. 2688 and on any related fixed asset transactions.