



Control Number: 42938



Item Number: 2

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014.

# 42938

JL  
2012



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
US ARMY INSTALLATION MANAGEMENT COMMAND  
HEADQUARTERS, UNITED STATES ARMY GARRISON, FORT BLISS  
1 PERSHING ROAD  
FORT BLISS, TX 79916-3803

June 15, 2012

2012 JUN 25 10 1 13

Directorate of Public Works

Ms. Tammy Benter, Manager  
Utilities and Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

RECEIVED  
2014 SEP 18 AM 11:50  
PUBLIC UTILITY COMMISSION  
FILINGS CLERK

RE: Request for Information Petition of Fort Bliss Water Services Company (FBWSC), Certificate of Convenience and Necessity (CCN) No 13060, Requesting a Cease and Desist Order against PRIDE Industries, Inc. (PRIDE), in El Paso County; Application No. 37305-D, May 14, 2012

Dear Ms. Benter:

In order to adequately respond to the referenced Request for Information, it is necessary to provide a brief background of both PRIDE's facilities maintenance contract and the privatized utilities contracts. It is our position that PRIDE is not in violation of any TCEQ code as they are merely acting as the agent of the Army who currently owns the utilities.

PRIDE is not a utility provider and does not receive any tariffs for the services it provides as an agent/contractor of the Garrison at Fort Bliss. PRIDE manages the utility systems owned by the Army under a facilities maintenance contract with the Directorate of Public Works (DPW). PRIDE only manages water and wastewater infrastructure that have been built beyond the original footprint (the legacy footprint) of the privatized utilities contracts. Our only viable method for the maintenance and operation of this government owned utility systems is to use our facilities maintenance contract with PRIDE.

At the time Fort Bliss' utilities were privatized, there were no provisions under the Utilities Privatization (UP) Program to incorporate new utility systems built to support the growth. Currently, we are inventorying and plan on transferring to the privatized utility contracts the new infrastructure built within the legacy footprint which the UP contractors have been maintaining and servicing in accordance to the provisions of their respective contracts.

Below are the responses to the specific numbered questions of the referenced Request for Proposal:

a. PRIDE is the Fort Bliss Garrison's facilities maintenance contractor; contract W911SG-07-C-0009 issued by the local Mission and Installation Contracting Command office.

b. There are no records of any office in Fort Bliss being involved in the FBWSC application of the CCN No's 13060 or 20963; neither as a reviewer or concurring owner.

c. PRIDE has not constructed any of the waterlines in the above mentioned East Bliss expansion area. The waterlines and other utility infrastructure were built under the Military Construction Army (MCA) program.

d. FBWSC has been aware of all new infrastructure as it was being built in areas outside the legacy footprint. They have also been aware that PRIDE has been maintaining it for the Army. See attachment; Mr. Kirk Brewer was an employee of ASUS (FBWS) and was part of the team involved in establishing procedures for approving digging permit procedures for the new construction of utilities.

e. PRIDE had no authority as a contractor to provide utility services. They maintain and operate the Army's system under the previously noted contract.

The office of the Deputy Assistant to the Secretary of the Army (DASA) issued guidance in 2010 by which the Army can incorporate new infrastructure into current privatized utilities contracts. This "streamlined" procedure has four specific provisions; one of them is that the additional "utility infrastructure cannot operate as planned or consistent with its purpose without being part of the UP provider's existing system"; with respect to the East Bliss water system, it is independent and can operate without being part of the legacy system. The two systems are however, connected via two gate valves which are not normally open.

It is our intention to request authority from the Army for the consolidation of the two water systems under the current privatized Utility Contractor.

Thank you for your assistance in this important matter. Point of contact for this action is Mr. John Ghim, Chief, Operations Maintenance Division, DPW at (915) 568-5201 or email: [john.d.ghim.civ@mail.mil](mailto:john.d.ghim.civ@mail.mil).

Sincerely,



Alfredo J. Riera, P.E.,  
Director of Public Works

Enclosure

DRAFT ISSA REQUIRED FOR DIGGING PERMIT PER CAROL ON 24 APR 07

EXCAVATION REQUEST  
(IAW AR 415-15)

No Ground Disturbance Is Authorized Before Concurring Signatures In ALL SIGNATURE BOXES Have Been Obtained

Section I: To Be Completed By Requesting Individual

Installation POC/Phone #:		DPW/W/O Number, MCA, or other Project Number:	
From: (complete office/name of requesting individual and address)		Purpose of request:	
Location of proposed dig: (attach map/drawing/ detailed plans)			
Equipment to be used: (equipment must meet safety standards established by the Dept of Army and OSHA)			
Hand Tools:		Mechanical Equipment:	
Excavation will begin:	Date:		Time:
Requesting individual: (please print name, grade, title)	Signature:	Date:	

Section II: To Be Completed By Directorate of Public Works (DPW) - Bldg 777 (915) 568-2753

Location of the proposed excavation has been checked and the location of existing utilities or interfering facilities is indicated on maps furnished.

No mechanical excavation will be accomplished within three feet of utilities and hand tools will be used without exception.

Area excavated will be satisfactorily backfilled  Drawings/electronic files furnished (to include irrigation systems)

Return to Master Planning after completion with as-builts

Recommend:  Approval  Disapproval

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Section III: To Be Completed By Directorate of Information Management (DOIM) - Bldg 56 (915) 568-1222

Location of the proposed excavation has been checked and no underground communication cables exist in the vicinity of the excavation.

Location of proposed excavation has been checked and underground communication cables exist in the vicinity of the excavation. Call (915) 568-5594 prior to the beginning of any excavation work.

Recommend:  Approval  Disapproval

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Section IV: To Be Completed By Directorate of Environment (DOE) - Bldg 624 (915) 568-6999 / 568-6746

Recommend:  Approval  Disapproval

Comments: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Section V: Obtain Following Approval Signatures:

Rio Grande Electric Service Representative  
3633 Mattox Ave./ (915) 778-0152 or \_\_\_\_\_ Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Texas Gas Service Representative  
(915) 680-7329/4700 BOLLARD ST. Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Ft Bliss Water Service Representative  
National O & M Representative  
Bldg 1320/ (915) 569-5359 Date: \_\_\_\_\_ Signatures: \_\_\_\_\_

Please note: A service order is required for water and wastewater lines.

Final Approval from Master Planning Division Chief  
Bldg 777 / (915) 568-5933 Date: \_\_\_\_\_ Signature: \_\_\_\_\_

DATE OF ACQUISITION

## Utility Outage SOP

The following procedure will be used to process all utility outage in support of USACE projects:

1. The contractor requesting the utility outage will fill out the utility outage form and include the Project Number in the upper right hand corner of the form. A 21-calendar day advance notice is required for all outage requests.
2. Upon completion; present to Project Engineer (PE) for review. Upon approval, PE will initial form next to Project Number.
3. Contractor will then email the form to DPW/Master Planning for review and approval with info copies to the UPs (Rio Grande Electric, Fort Bliss Water Services, Texas Gas), and DOIM.
4. The UPs, and DOIM will begin their review for how to perform the outage and minimize impact to the customers and/or possible impacts to their utilities or communications in the area or other issues that will effect approval.
5. Within 7 calendar days, the UPs, and DOIM will provide email input to DPW/Master Planning on existing utilities/comm. within the area along with the utility outage form that shall be signed and dated.
6. Upon DPW/Master Planning review of all inputs, the Chief of Master Planning will approve, approve with comments, or deny the utility outage request. The Chief of Master Planning will provide email copies of the utility outage request to the PE and the requesting contractor.
7. Upon approval of the utility outage, the PE will coordinate with the affected facilities, Garrison and Post EOC to insure all effected organizations are notified.
8. If the utility outage has to be rescheduled, the PE will have to work with DPW, Garrison and POST EOC to insure all are notified of the change.

**Morales, Juan R CIV (US)**

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**From:** Ballog, Dennis SWF [Dennis.Ballog@swf02.usace.army.mil]  
**Sent:** Tuesday, May 08, 2007 11:47 AM  
**To:** Brewer, Kirk S.; graham.mcchesney@us.army.mil; Collins, Troy; dmonteros@ftbliss.asusinc.com; daniel.n.portillo@us.army.mil; edward.duvall.byrd@us.army.mil; Eva.Jones@emh10.bliss.army.mil; Fuentes, D. Garcia, Juan; Gill, Ed J SWF; Jack.Clifton@jacobs.com; Jones, Carole M.; Jose Morales; eulalio.rodriguez@us.army.mil; Larry T. Powell; Manuel Uy; Maria.Montes@emh10.bliss.army.mil; michael.rias@us.army.mil; miguel.chengguajardo@us.army.mil; Mike Lockamy; Michael.d.Radford@us.army.mil; Moreno, John D SWF; Morgan, John E SWF; Ornelas, Enrique .; scase@huiitt-zollars.com; Severson, Rick SWF; Shafii, David N.; Shahzada, Shahrukh SWF; Vonasek, Michael SWF; White, Timothy L. COL; Wojciechowski, David; Stephen.P.Zediak@swf02.usace.army.mil  
**Subject:** Utility Outage and Digging Permit SOPs  
**Attachments:** Utility Outage SOP.doc; Digging Permit.pdf; Digging Permit SOP.doc; Utility Outage Request.pdf

**ALCON:**

I have attached the forms and the SOPs for the Utility Outage and Digging Permits. Please review and provide any comments. I know we had a lot of discussion last week and I would like to make sure the SOPs reflect what we agreed to. Also; I would like to confirm that today's meeting has been cancelled, but we are on schedule for next Tuesday at 1300.

Thanks.....

Dennis <<Utility Outage SOP.doc>> <<Digging Permit.pdf>> <<Digging Permit SOP.doc>> <<Utility Outage Request.pdf>>

Dennis F. Ballog  
Bldg. 777, Room 204  
Fort Bliss, TX 79916-6816  
Office: Comm 915-568-7016  
DSN 978-7016  
Cell: 602-418-8924  
Fax: 915-568-7766  
Dennis.Ballog@swf02.usace.army.mil

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Any comments, recommendations or guidance, either expressed or implied in this correspondence are for general project planning and coordination purposes only, and are not meant to be relied upon for construction activities. URS Group, Inc. assumes no responsibility or liability for construction activities or for architectural or engineering design. All questions regarding construction or design should be addressed in writing to the responsible Government Contracting Officer or Agency.

Bryan W. Shaw, Ph.D., *Chairman*  
Carlos Rubinstein, *Commissioner*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 14, 2012

### **CERTIFIED MAIL**

Mr. Al Riera, P.E., Director of Public Works  
Fort Bliss, Bldg 777  
Pleasanton Rd.  
Fort Bliss, Tx 79916-6816

### **Request For Information**

Re: Petition of Fort Bliss Water Services Company (FBWSC), Certificate of Convenience and Necessity (CCN) No. 13060, Requesting a Cease and Desist Order against PRIDE Industries, Inc. (PRIDE), in El Paso County; Application No. 37305-D

Petition of FBWSC, CCN No. 20963, Requesting a Cease and Desist Order against PRIDE, in El Paso County; Application No. 37306-D

CN: 602629644; RN: 104271663 (water) 104279674 (sewer)

Dear Mr. Riera:

We have received the petition referenced above from the FBWSC to request a Cease and Desist Order against PRIDE. FBWSC alleges that PRIDE is providing retail water service in FBWSC's certificated area. Please respond to this matter in writing regarding this allegation. Also, please provide the following information or documentation:

1. Please explain the contractual relationship between PRIDE and Fort Bliss.
2. Please describe the process and timeline by which FBWSC obtained CCN No.'s 13060 and 20963 at Fort Bliss.
3. Please state when PRIDE/Fort Bliss constructed its waterline or any other facilities to serve areas in the FBWSC certificated area, if it has done so. Please provide documents to support your claim.
4. Please state whether FBWSC was aware that PRIDE/Fort Bliss was providing service and the dates of any correspondence or communication indicating their awareness and/or objection.
5. Please state under what authority PRIDE/Fort Bliss is providing service, if doing so, to the areas certificated to FBWSC.

Mr. Al Riera, P.E

Page 2

May 14, 2012

Please provide this information by **June 14, 2012**. If we can not resolve the matter administratively, the request will be forwarded to the Commission's Chief Clerk's Office and a hearing by the State Office of Administrative Hearings (SOAH) will be requested.

If you have any questions, please contact Mr. John Lock, P.E., at 512/239-4710, or if by correspondence, include Mail Code 159 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Benter".

Tammy Benter, Manager  
Utilities and Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality

JL/mmg

cc: PRIDE Industries, P.O. Box 31310, El Paso, Tx 79931-0310



COPY

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

DIRECT DIAL. (512) 469-6108  
EMAIL: Chris.Smith@tklaw.com

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June 14, 2012

Ms. Tammy Benter, Manager  
Utilities and Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality  
MC 159  
P. O. Box 13087  
Austin, TX 78711-3087

RE: Fort Bliss Water Services Company; Cease and Desist Request against Pride Industries; Application No. 37305-D and Application No. 37306-D  
TCEQ Request for Information

Dear Ms. Benter:

I am writing in response to your letter dated May 14, 2012, in which you asked that Fort Bliss Water Services Company ("FBWSC") provide certain information concerning the above-referenced cease and desist request. That information is provided below.

**1. Please describe the process and timeline by which FBWSC obtained CCN Nos. 13060 and 20963 at Fort Bliss.**

On May 11, 2004, FBWSC filed its applications for a water and sewer CCN. The applications were styled as follows:

- Application from Fort Bliss Water Services Company to Decertify a Portion of Certificate of Convenience and Necessity (CCN) No. 10211 from El Paso Water Utilities Public Service Board and to Obtain a Water CCN in El Paso County; Application No. 34593-C
- Application from Fort Bliss Water Services Company, Inc. to Obtain a Sewer CCN in El Paso County; Application No. 34594-C

By letter dated July 9, 2004, El Paso Water Utilities Public Service Board agreed to decertify portions of its certificated area to FBWSC. On October 7, 2004, the TCEQ staff recommended that the Executive Director approve the applications. The Executive Director granted FBWSC's CCN applications on November 16, 2004.

**2. Please explain the contractual relationship between FBWSC and Fort Bliss.**

On October 1, 2004, the Federal government privatized the water and wastewater systems at Fort Bliss in accordance with the provisions of 10 U.S.C. § 2688, the utility privatization statute. On that date the Army awarded Utilities Privatization Contract No. SP0600-04-C-8625 (the "Contract") to American States Utilities Services, Inc. ("ASUS"), FBWSC's parent. Under the Contract, ASUS is required to own, operate, maintain, renew and replace the water and wastewater utility systems and provide service to "all existing and new customers" at Fort Bliss. In return, the Contract requires the Army to pay a fixed monthly charge to cover all the costs associated with operations and maintenance and renewals and replacements to maintain the reliable operation of the water and wastewater systems.

In accordance with the Contract, the Army conveyed to ASUS essentially all of the water and wastewater systems in existence as of October 1, 2004. FBWSC also applied for and was granted CCNs from the TCEQ so that it could operate the systems. With the agreement of the government, ASUS subsequently transferred the Contract to its wholly owned subsidiary, FBWSC.

**3. Please identify the water system by ID number that is the subject of this petition.**

FBWSC believes that Pride Industries ("Pride") is operating under PWS No. 0710187 ("East Biggs Water System").

**4. Please identify the date that you became aware of this water system and the dates of communication of your objection to Fort Bliss.**

FBWSC first became aware that the Army intended to construct new water and wastewater utility infrastructure at Fort Bliss in approximately November 2006. Since that time, FBWSC has made numerous attempts to resolve the issues with the Army related to FBWSC's right to operate the new water facilities under the Contract and under Texas utility law. During their negotiations, FBWSC and the Army have discussed transferring the newly constructed water facilities to FBWSC for operation. Until very recently, FBWSC was optimistic that the negotiations would be successful. Examples of FBWSC's communications with the Army on these issues include:

- November 27, 2006 e-mail from FBWSC to the Army objecting to any other entity operating new facilities in the Longknife Village area of the base;
- May 9, 2007 memorandum from ASUS's counsel to the Army Contracting Agency, requesting that the Army turn over operation of the new water facilities to FBWSC as required under the Contract;
- February 19, 2008 letter from FBWSC to the Army, reiterating FBWSC's position expressed in a prior meeting that it was the only entity authorized to provide water service at Fort Bliss. On the same day, FBWSC participated in

a meeting with the Army where it objected to having another operator maintain water and sewer facilities at Fort Bliss;

- April 4, 2008 letter from FBWSC to the Army Contracting Agency, expressing concern over the Army's breach of the contract and the fact that FBWSC was denied access to critical water system facilities at Fort Bliss;
- September 18, 2009 letter summarizing FBWSC's communications over the preceding years in which FBWSC raised concerns about the Army's failure to modify the Contract to give FBWSC responsibility and compensation for operation and ownership of water infrastructure at Fort Bliss;
- March 14, 2011 letter in which FBWSC expressed concern that Fort Bliss has not transferred the new utility infrastructure to FBWSC and that the Contract has not been modified to compensate FBWSC for the operation and maintenance of the expanded water and wastewater utility systems nor provide for the eventual renewal and replacement of these assets; and
- March 26, 2012 white paper delivered to the Fort Bliss Garrison Manager at a meeting expressing concern that instead of modifying the Contract to engage FBWSC to provide water service to the new facilities, Fort Bliss facilitated a violation of 30 TEX. ADMIN. CODE 291.101 by engaging Pride to provide retail water service in FBWSC's certificated area. The paper expressed hope that its contents would promote dialogue and partnering with Fort Bliss to avoid further legal action.

Copies of these communications have been enclosed with this letter. FBWSC notes that it is possible that additional communications on this subject exist. In summary, while FBWSC has been aware for some time that the Army had constructed new water facilities and had engaged a contractor to operate those facilities within FBWSC's certificated area, FBWSC was negotiating with the Army in good faith to resolve the dispute without agency involvement. Only within the last few months has FBWSC come to believe that the dispute is unlikely to be resolved without agency or judicial intervention.

**5. Please explain why Pride is the subject of this petition.**

FBWSC recognizes that Pride is the Army's contractor, and that ultimately, this dispute has been caused by the Army's failure to abide by the terms of the Contract. Nevertheless, Pride is the proper subject of this petition because it is the entity that is providing retail water service within FBWSC's CCN area. Specifically, Pride is a "retail public utility" providing "retail water or sewer utility service" as those terms are defined by Texas Water Code § 13.002(19) and (20). The Army is not directly providing retail water service, and thus was not named in FBWSC's cease and desist petition.

June 14, 2012  
Page 4

Please let me know if you require any additional information from FBWSC regarding this matter. FBWSC is open to discussing this matter with you and your staff. In addition and as evidenced by FBWSC's extensive prior communications on this issue, FBWSC would be interested in participation in either formal or informal alternative dispute resolution if the agency feels it would be appropriate. In the absence of such a process, FBWSC reiterates its request that the Commission issue an order directing Pride to cease and desist from providing retail water utility service within FBWSC's certificated area.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher Smith', with a stylized, overlapping loop structure.

Christopher Smith

CDS/cb

Enclosure

✓cc: John Lock, P.E.

**Sent:** Monday, November 27, 2006 4:29 PM

**To:** 'Delgado, Frank'

**Cc:** Byrd, Edward; Sparks, Bill; Harris, M. Bud; 'Sorett, Stephen M.'; Ron Cook (ronal.b.cook1@bliss.army.mil); Shafii, David N.

**Subject:** Unit of Action O&M Services

Good Afternoon, Frank ~

Following up on our 16 November conversation regarding water and wastewater O&M for the Unit of Action (UA), you were going to look into the VT Griffin (VTG) scope of work. I would like to discuss what you have learned regarding this matter.

As I mentioned, VTG has been making inquiries of FBWSC for documentation of the newly constructed water storage tank and booster station. They indicated that they were to take over operation of this facility as soon as the warranty period expires, which they were told is 1 January 2007.

As discussed with you, it is FBWSC's position that the water storage tank and booster station would remain with FBWSC as this facility was constructed by FBWSC. I understood that you agreed with this position when we spoke but needed to look into the matter. In addition to operating this specific facility, FBWSC feels that it has the contractual right as the franchised water/wastewater purveyor at Fort Bliss to provide O&M services for all of the UA. This seems to be the most logical decision for the base. In fact, as I've been informed by Bud Harris, David Shafii has stated a several meetings that having one water/wastewater contractor is his preference.

I have discussed this matter with VTG's Ron Cook and he has shared with me that VTG has no interest in operating the water and wastewater systems for the UA. He also agrees that having one water/wastewater contractor at Fort Bliss is much better than having multiple water/wastewater contractors. Multiple contractors create a number of issues, including confusion when dispatching emergencies. To avoid this problem VTG has asked if FBWSC is willing to be a subcontractor to VTG for the UA water/wastewater facilities. Being relegated to a subcontractor role for facilities we feel we have the contractual right to operate is not an acceptable alternative to FBWSC.

We appreciate the research you are doing on the VTG scope of work and look forward to hearing back from you soon on this matter. In addition to the O&M issues, we need to also discuss adding the water storage tank and booster station to our inventory. Thanks in advance for your response.

Sincerely,

Rusty Hodges  
American States Utility Services, Inc.  
Fort Bliss Water Services Company  
(714) 689-1188 x105 Office  
(714) 273-2345 Cell

MEMORANDUM

---

**TO:** Bryon Young, Army Contracting Agency  
Scott Lind, Army Contracting Agency

**FROM:** Stephen M. Sorett

**DATE:** May 9, 2007

**RE:** U.S. Army Actions Impacting Ft. Bliss Waste and Wastewater Privatization Contract

---

This memorandum concerns potential U.S. Army actions that would impact certain agreements with our client, the Ft. Bliss Water Services Company ("FBWSC"). In short, we understand that the Army, in recent communications concerning certain projects involving improvements to the water and wastewater distribution systems at Ft. Bliss, Texas, has indicated an intent to take certain actions that would be contrary to Utilities Privatization Contract No. SPO600-04-C-8265 (the "Contract"), which is between the Defense Energy Support Center and FBWSC. We look forward to working with you and other officials to resolve our concerns regarding these actions.

SUMMARY

The Contract, which was effective on October 1, 2004, is administered by the Ft. Bliss Directorate of Contracting ("DOC"). Under the Contract, FBWSC assumed ownership, operation and maintenance of all of the "water and wastewater distribution systems" at Ft. Bliss for a term of 50 years. Contract, Preamble. The government pays a fixed monthly charge for utility distribution or collection services that covers all the costs associated with the requirements of the contract, including costs for operations, maintenance, renewals and replacements to maintain the long term reliable operation of the systems and capital upgrades (the "Fixed Monthly Charge"). *Id.* at ¶ B.3. The government recovers the purchase price of the system from FBWSC through specified credits to the Fixed Monthly Charge. *Id.* A fundamental premise of the Contract is that FBWSC has both the exclusive right and the obligation to provide water and wastewater utility services to all existing and new customers in the Fort Bliss service area. *See e.g.*, Contract ¶ C.4. Moreover, the Contract clearly contemplates that FBWSC will perform all the design and construction of any improvements to the water and wastewater systems, including improvements required by the construction of new facilities. *Id.* at ¶ C.11.

One of our concerns pertains to the Unit of Action (UA) project at Ft. Bliss. Clark Construction built the facilities, using FBWSC as a subcontractor. After Clark built the facility the Directorate of Public Works ("DPW") at Ft. Bliss turned operation of the water and wastewater system over to VT Griffin rather than to FBWSC as required by the Contract. We have just learned that DPW and DOC are negotiating with NISH to operate all the utilities (water, wastewater, gas, and electric) for the UA facilities. This would result in another violation of the Contract. Another concern pertains to the next large wave of construction at Ft. Bliss, for

the Brigade Combat Team (“BCT”) facilities. We have learned that DOC and DPW are now actively conducting a procurement soliciting companies to do the construction, including the water and wastewater work, and that DPW plans on constructing a parallel utility system to the one that FBWSC now operates. Moreover, we understand that DOC/DPW have filed for their own Public Water System number and are having a connections installed from the City of El Paso to serve the BCT, indicating an intent to cut FBWSC out of serving the BCT. These actions would violate the Contract.

To resolve these concerns, we request that the ACA direct DPW and DOC to: 1) turn over operation of the UA systems to FBWSC, 2) modify the Solicitation covering construction of the BCT to require general contractors to subcontract all water and wastewater system construction work to FBWSC; 3) turn over operation of the BCT systems to FBWSC upon completion of the construction so that FBWSC can undertake operations and maintenance as well as renewal and replacement work as required under its contract..

## ANALYSIS

### **FBWSC’s Exclusive Right to Serve All New Customers at Fort Bliss**

As mentioned above, under the Contract, FBWSC has the exclusive right to provide water and wastewater utility services to all existing and new customers in the Fort Bliss service area. During the time that proposals were submitted and the contract was negotiated, there was no question that ASUS (now FBWSC) was going to be the only Utility Privatization contractor providing water and wastewater services for the existing and future needs at Fort Bliss..

The Preamble of the Contract states that FBWSC:

. . . shall assume ownership, operation and maintenance of the utility infrastructure water and wastewater distribution systems at Fort Bliss, Texas. [FBWSC] shall furnish all necessary labor, management, supervision, permits, equipment, supplies, materials, transportation, and any other incidental services for the complete ownership, operation, maintenance, repair, upgrades, and improvements to the utility system.... The terms and conditions of RFP SP0600-00-R-0009, including the applicable portion of Section J’s, are incorporated by reference. ...”

Paragraph B.2 of the Contract shows clearly that the government agreed to privatize the entire existing and future water distribution and wastewater collection system for Ft. Bliss and that FBWSC would provide “the resultant 50 years service”. Specifically, Paragraph ¶ C.4 states that FBWSC “shall provide utility service to **all** existing and **new customers**” (emphasis added). The full text of that provision reads as follows:

#### C.4 – Service Area-

“The service area is defined as all areas within the Government installation boundaries and any other facilities and property boundaries under control of the Installation, as defined in the utility-specific attachments (Section J).” C.4 – Service Area-

- “The service area is defined as all areas within the Government installation boundaries and any other facilities and property boundaries under control of the Installation, as defined in the utility-specific attachments (Section J).”
- “Within the service area and upon government request, the contractor shall provide utility service to all existing and new customers.”
- “At any time, by written order, the Administrative Contracting Officer may designate any location within the service area where utility service under the contract shall commence or be discontinued.”
- “Within the service area and upon government request, the contractor shall provide utility service to all existing and new customers.”
- “At any time, by written order, the Administrative Contracting Officer may designate any location within the service area where utility service under the contract shall commence or be discontinued.”

The Contract defines the service area as “all areas within the Government installation boundaries and any other facilities and property boundaries under the control of the Installation as defined in the utility-specific attachments.” *Id.* The UA and the BCT areas are in the service area of the Contract. Therefore, any Army action by the Army to deny FBWSC its rights to serve customers in these areas would be a breach of the Contract. These actions not only would violate the Contract but also would make no sense from an operational and policy perspective as the entire purpose of the Army’s utility privatization program is to have a single utility that takes full responsibility for the operations at the Fort, including repair and replacement over the 50 year period.

We have carefully reviewed the contract and have found numerous references in it where the Government clearly contemplated that FBWSC would be the only entity to provide water and wastewater operations (including R&R) for existing and future needs. Here are some of the more important references:

- C.3.3 – “The Contractor shall be responsible for reading, maintaining, and calibrating all secondary meters on the utility system(s), including those additional meters identified in the utility specific attachments(Section J) to be installed by the Contractor.”
- C.3.3.1 – “Contractor shall provide...secondary meters requested by the Government for any purpose throughout the contract period. **Installation of and responsibility for future secondary meters may constitute reasonable cause for a service charge adjustment.**”
- C.11.2.3 – “... The Capital Upgrades and Renewals and Replacements Plan shall clearly address planned system improvements or operational changes needed to comply with any revised standards.



-C.11.2.4 – “Connections and Disconnections – **the capital upgrades and renewals and replacements plan shall include a list of anticipated new service connections, including a preliminary design and estimated construction costs. The government will provide a list of new service requirements and anticipated disconnections.**”

B.3.2 – “...additionally, capital upgrades...shall be additive to the fixed monthly charge...”

H.8.1 – “... The price of each initial capital upgrade proposed by the offeror ... will be added to the fixed monthly charge ...”

J.5.8 – “**the service area is defined as all areas within the US Army Fort Bliss boundaries** to include the main cantonment area, Site Monitor Station, McGregor Range, Oro Grande Range, Dona Ana Range, and Biggs Army Airfield.”

J.5.9 – “The requirement for water service to the Beaumont Medical Center and Fort Bliss activities at this off installation site are part of and associated with this scope.”

-L.2.2 – “There will be a single award for each utility system...”

-L.6.2 – “The QMP shall identify the performance standards and/or specifications that the Contract will comply with for construction...”

- L.6.4 – “...propose an adequate time-phased turnover of the facilities, equipment, permits, operation and maintenance, and other responsibilities **to include any new construction...**”

- M.3.2 – “The best value is demonstrated by the Offeror providing the technical, management, and cost/financial capabilities necessary to fulfill the requirements of the contract **by assuming total ownership of the Government’s utility system.**”

- M.4.2.3 – The adequacy of offerors proposed **Capital Upgrades** and Renewals and Replacements Plan will be...evaluated for the proposed means and methods for **ensuring a long-term efficient system.**”

-M.4.2.5 –

- “**Offerors shall describe in detail their capability to finance** the utility system purchase price, CIAC tax payment and capitalization principal, renewals and replacements, and **upgrades.**”
- “...documented evidence that the Offeror is in sound financial condition and has the ability to secure the necessary financing to meet the **financial and capital requirements needs of the utility system both now and in the future.**”

**Amendment 3:**

p.29 – “The Capital Upgrades and Renewals and Replacements Plan is to provide a detailed description of the initial renewals and replacements **and the Contractor’s philosophy towards long term capital renewals and upgrades.**”

**Amendment 16:**

- p.4 – “**Upon the effective date of the bill of sale, the [Army] will no longer have an interest in the utility system...**”
- **H.10.2 Future Capital Upgrades** “Future capital upgrades for which the Government agrees to pay... will be added to the Fixed Monthly Charge.”

**Price Redetermination Manual**

2.6 Capital Upgrades – “new construction to add to or expand the utility system will add inventory and O&M and R&R payments”

2.6.1 – “...the Contractor should submit a price for the upgrade supported by a detailed cost estimate, cost estimate and an amortization schedule showing amount to be added...government may choose to pay amortized price or lump-sum for the capital upgrade.”

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Based on the above language in the Contract, the J Attachments, the Solicitation, and the Government issued Price Redetermination Manual, FBWSC believes it has every reason to expect that it will be responsible for and have the right to construct, own, and operate all capital upgrades to the water and wastewater systems at Fort Bliss as part of the original Contract to own the water and wastewater systems. FBWSC entered into this contract with the full intent and expectation of building, owning, and operating the water and wastewater distribution systems at Fort Bliss at the time of contract award and into the future to include all capital improvements made at the Fort throughout the life of the contract.

**FBWSC’s Exclusive Right To Design And Construct Improvements**

The Contract requires FBWSC to propose upgrades, renewals, and replacements needed to maintain and operate the utility systems in a safe and reliable condition and to meet all other requirements of the contract, including applicable regulatory requirements. *See* Contract ¶ C.11. Among other things, the contractor is to propose capital upgrades to improve the efficiency of the systems, to meet legally applicable regulatory requirements in response to changes during the contract term, to implement new technologies, and to provide new service connections to new customers. *See* Contract ¶¶ C.11.2.2, C.11.2.2.2, C.11.2.4. Under paragraph C.11.2.4, the government must provide FBWSC with a list of such connections. FBWSC must then submit design and construction cost estimates to the government for the installation of these connections. Pursuant to paragraph H.8.2., FBWSC may then recover these costs through an

increase to the Fixed Monthly Charge. Nowhere does the Contract contemplate that any other contractor or government agency will have responsibility for construction and ownership of any part of the Ft. Bliss water distribution and wastewater collection system.

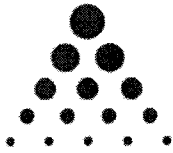
Attachment J to the Contract is particularly instructive. The contract specifically defines (in the J Attachment) the privatized system as “all appurtenances physically connected to the distribution system from the point in which the distribution system enters the Base.” This is an unambiguous definition of what constitutes the privatized system, but it is not a static definition. Utility systems, by their very nature, are required to adapt over time to the needs of the customer. As the owner and operator of the Fort Bliss water and wastewater systems, FBWSC is required to extend service to all new customers as needed, and the contract specifically states that “the new/planned construction of barracks, complexes, dining facilities, and residential housing will require improvements or extensions of existing power distribution facilities.”

Moreover, the Attachment J to the Contract specifies the points on the water distribution and wastewater collection piping systems where ownership of the system changes from FBWSC to the owners of the various buildings on the base (i.e., the “points of demarcation” for the systems). Paragraph J5.11 provides for only two possible points of demarcation for the water distribution system: 1) the point where the service line enters the structure (if there is no water meter, backflow device or valve on the service line entering the structure); or 2) the water meter, backflow device or valve located on the service line entering the structure (which is within 25 feet of the exterior of the structure). Similarly, paragraph J32.12 of the Contract specifies only two possible points of demarcation for the wastewater collection system: 1) the point where the service line enters the structure (if the sewer system flow meter is located on the service line entering the structure or there is no flow meter or system cleanout device on such line); or 2) the cleanout device (if there is no flow meter). The cleanout device is within 10 feet of the building perimeter on the service line. The Contract fails to provide for demarcation points other than at a structure, indicating an intent that FBWSC will design, construct, own and operate the systems serving all structures at Ft. Bliss now and in the future..

Finally, the Easements issued by the Army to FBWSC (and incorporated by reference in the Contract) clearly contemplate that FBWSC will perform all the design and construction of any improvements to the water and wastewater systems, including improvements required by the construction of new facilities. In particular, Easement No. DACA63-2-04-0547 grants to FBWSC easements “for the construction, operation, maintenance, removal and replacements of existing **and future** water production, treatment, transmission and distribution facilities” (emphasis added). Similarly, Easement No. DACA63-2-04-0551 grants to FBWSC easements “for the construction, operation, maintenance, removal and replacements of existing **and future** wastewater collection, distribution and treatment facilities” (emphasis added). Both easements provide that the government’s right to enter the premises covered by the easements (the “Premises”) for government purposes must not interfere with FBWSC’s easements. Easement No. DACA63-2-04-0547 ¶10, Easement No. DACA63-2-04-0551 ¶10. In addition, both easements grant FBWSC legal remedies in the event that government entry into the Premises causes damage to FBWSC. *Id.*

## CONCLUSION

If the Army follows through on its apparent intentions concerning the UA and the BCT, the Army's actions would be contrary to the Contract, which clearly gives FBWSC the exclusive "franchise" on all work required for new service connections, to the points of demarcation of new buildings and to serve all existing and new customers at Ft. Bliss. To avoid this breach, we request that the ACA direct DPW and DOC to: 1) turn over operation of the UA systems to FBWSC so that FBWSC can conduct the O&M as well as the R&R work on the Fort, 2) modify the Solicitation covering construction of the BCT to require general contractors to subcontract all water and wastewater system construction work to FBWSC; and 3) turn over O&M and R&R operations of the BCT systems to FBWSC upon completion of the construction. We hope that we will be able to work together with you and your staffs to avoid unnecessary further actions over this issue.



# Fort Bliss

WATER SERVICES COMPANY

A Subsidiary of American States Utility Services, Inc.

**February 19, 2008**

**VIA E-MAIL ONLY**

Troy D. Collins, P.E.  
Fort Bliss Program Director  
Fort Bliss Program Office  
Post office Box 6310  
El Paso, Texas 79906-6310

**Re: Meeting of February 15, 2008**

Dear Troy:

I wanted to take this opportunity to again thank you and Colonel White for meeting with myself and my team on Friday. Your kind opening remarks regarding the quality of Fort Bliss Water Services Company's (FBWSC) work was greatly appreciated and your open approach to listening to our concerns and asking questions demonstrated that you were genuinely trying to see if we can resolve our differences. As I think we both agree, the more we can discuss and consider our respective concerns and issues, the better it is for both the Government and FBWSC.

As I think we made clear, FBWSC is particularly interested in resolving what it deems to be serious intrusions into its contract. While I understand that you may be operating under the assumption that the Government can always open up competitive bidding for water and wastewater services, I would submit to you that the contract does not so provide. I hope FBWSC's position was clear and unequivocal - the contract mandates that FBWSC be the service provider for any and all current and future Operations & Maintenance requirements. In addition, the contract also mandates that FBWSC conduct any new construction of any water and wastewater infrastructure anywhere on the base. This is entirely consistent with the overall intent of the Utility Privatization statute and program that there be only a single utility at each base for each type of utility service -- in this case water and wastewater. To the extent that the Government does not agree with either position, it would be most helpful to have specific contractual references that the Government contends allows for the use of any other contractor or service provider to deliver these services or undertake construction on these assets.

In addition to these fundamental issues, we also discussed FBWSC's serious concerns about having other Government contractors tying into its pipelines and accessing its facilities. As I explained, because FBWSC must comply with its contractual requirements to provide safe and reliable water to the entire base, it simply cannot have unknown and/or uncertified

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contractors accessing its system, particularly when it is without FBWSC's knowledge. Moreover, aside from posing obvious breach of contract consequences, the current arrangement of having a subcontractor operate the Longknife Village, which is directly connected to FBWSC facilities, poses a serious health risk to soldiers and families as FBWSC has no direct control over the method by which this system is operated. We really need to resolve this matter immediately before a health and safety issue affecting the base is upon us.

At the close of the meeting I was very relieved to hear from Col. White that he wanted to immediately discuss our issues with the DPW staff. I understood from our meeting that he was going to talk to them that same day. Because this is such an important issue to FBWSC, I would ask that you get back to me no later than close of business Wednesday, February 20, 2008 with a status update on the issues discussed. If you, DPW or the base command would like to convene additional meetings, please advise me as soon as possible so we can arrange to have the right people in attendance.

I appreciate your prompt attention to these matters and look forward to hearing from you tomorrow. As always, please call me with any questions you might have on these matters.

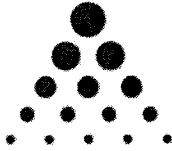
Very Respectfully,



Rusty Hodges

PS – As a late development, we were instructed by DPW and DOC this afternoon to remove FBWSC locks and equipment from the Longknife Village reservoir and pumping facility and essentially abandon its operation. These instructions are contrary to our contractual rights and detrimental to the system operation. In order for FBWSC to even consider following these instructions, at a minimum, a formal request from our Contracting Officer must be received in writing delineating the specific clauses in our Utility Privatization contract where DOC and DPW feel this action is deemed permissible.

c: Colonel Tim White



# Fort Bliss

WATER SERVICES COMPANY

A Subsidiary of American States Utility Services, Inc.

April 4, 2008

Mr. Frank Delgado  
Contracting Officer  
U.S. Army Contracting Agency  
Southern Region (SFCA-SR-BL)  
2021 Sheridan Road  
Fort Bliss, Texas 79916-6816

**Subject: Breach of Prime Contract**

Dear Mr. Delgado:

I am writing to you to express our continued and strong concern about the ongoing situation pertaining to the pumping station that serves the Longknife Village, the JTF North facility, the Border Patrol facility, and the Prison. This pumping station provides critical support to the Fort Bliss Water Services Company (FBWSC) system in helping to sustain minimum water pressure and fire protection capabilities, which are required by State law.

The recent actions by Mr. Michael Lockamy whereby he directed staff to physically lock FBWSC out of the pumping station (which was constructed and was being operated by FBWSC) is a clear breach of our prime contract and poses an imminent danger to the health and safety of the individuals who depend upon FBWSC to provide water and wastewater services at the aforementioned facilities.

To underscore the seriousness of this situation, on Wednesday of this week the Prison's water pressure fell to such a low level that water supply was disrupted. Additionally, customers in the Longknife Village experienced extremely low pressure. This disruption in service most likely violated minimum pressure requirements as mandated by State law. FBWSC received urgent requests to address the situation, but was unable to respond since we have been physically prevented from having access to the pumping station. The decision to have a subcontractor, Pride Industries, perform the work that FBWSC had been performing since construction of the facility was completed in February 2006 not only interferes with our ability to carry out our contractual obligations, but is also a clear and continuing breach of our contract. This needs to be rectified immediately.

As to the inquiry made of FBWSC on February 19, 2008, in which Mr. Lockamy expressed interest in having FBWSC take over ownership, O&M, and R&R of the newly constructed 12" water line which follows Sergeant Major Blvd. starting at Scott Street and ending at the pumping station, we are interested in having this occur but need additional details from you in writing including how you will facilitate the transfer of

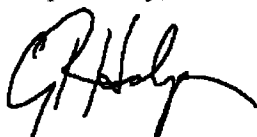
Mr. Frank Delgado  
April 4, 2008  
Page 2 of 2

assets. This written explanation needs to include the process you propose to follow in order to obtain approval from the Texas Commission on Environmental Quality (TCEQ).

We concur with Fort Bliss that this newly constructed water line along with all other existing and newly constructed water and wastewater assets at Fort Bliss contractually are the responsibility of FBWSC, and to this end we look forward to taking over responsibility for this asset.

Given the urgency of the situation and the imminent health and safety threat to individuals served by the pumping station mentioned above, we demand that you return operational control of this facility to FBWSC by no later than 10AM MDT on Tuesday April 8, 2008.

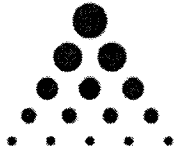
Respectfully,



Granville R. Hodges, Jr.  
Vice President of Operations  
Fort Bliss Water Services Company

c: Mr. Brian Foulkes  
Mr. Edward Byrd  
Mr. Michael Lockamy  
Mr. Toufic Alhaj  
Mr. Juan Morales  
Mr. Mary Dreyer  
Mr. McClellan Harris III  
Mr. James Gallagher  
Mr. Kirk Brewer  
Mr. Lynn Steinle





## Fort Bliss

WATER SERVICES COMPANY

A Subsidiary of American States Utility Services, Inc.

September 18, 2009

ATTN: David Wojciechowski  
Contracting Officer  
Team Lead, Utilities  
Mission & Installation Contracting Command  
Fort Bliss, Texas  
PH: (915) 568-2642  
FX: (915) 568-7567

**SUBJECT:** Process Flow For New Capital Construction with Utility Privatization Providers – Fort Bliss, TX

Dear Mr. Wojciechowski:

As requested, attached is a suggested process flow for new capital construction at Ft. Bliss. We recognize that, for the CAB Phase III, CAB Phase IV, Warriors in Transition (WIT) Infrastructure, Community Facilities Infrastructure and various infill projects only (the "Projects"), the actual process will vary from this document because funding for our efforts will come from the United States Army Corps of Engineers through its MATOC contractors. We appreciate you taking the initiative to jointly partner a process that is amenable to both parties.

We anticipate that on future projects the funding for our efforts will be added via MIPR to our Utilities Privatization (UP) Contract. Please note that, step numbers 2.a and 6, which involves modification of the Contract and associated Bills of Sale to reflect the new infrastructure, is of paramount importance to ASUS. As you may know, over the last five years we have raised concerns on numerous occasions with other representatives concerning the failure to modify the UP Contract to give FBWSC responsibility and compensation for ownership, operation and maintenance of new infrastructure.

Accordingly, before we can fully agree to participate in the Projects, we will need a definitive resolution of these concerns in the form of a modification to the UP Contract and Bill of Sale that (1) adds all the new infrastructure constructed since the effective date of the UP Contract and (2) commits to add all the new infrastructure associated with the Projects.

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Tel: (915) 569-5359 Fax: (915) 569-5199

We trust you will understand our need to inform you that, until we receive that modification, neither the Government nor any of its contractors are authorized to demolish or otherwise disturb the existing assets of FBWSC. As indicated in our July 20, 2009 letter to Mr. Richardson, any such action will be considered an interference with our property rights.

Should you require further information or if you would like to discuss further, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'GRH', with a long horizontal flourish extending to the right.

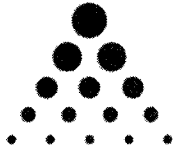
Granville R. Hodges  
Vice President, Operations

Attachment

cc: Mr. McClellan Harris III, ASUS  
Mr. Greg Thomas, ASUS  
Mr. James Gallagher, ASUS  
Mr. Lynn Steinle, FBWSC  
Mr. Daniel Monteros, FBWSC

## **NEW CAPITAL CONSTRUCTION METHODOLOGY FBWSC and FORT BLISS**

1. Ft Bliss DPW/DOC will provide notification to FBWSC that new capital construction is planned for installation that will entail utility infrastructure.
  - a. FBWSC recommends that it be included at the earliest possible stage in the process and be allowed to provide assistance at the preparation of the 1391 stage if practicable.
    - i. By FBWSC being involved at this early stage, it provides an opportunity for the Army to indicate to Congress in the DD-1391 that it is the intention of the Army to have the UP provider perform the project utility infrastructure construction and assume ownership and that the MILCON funds budgeted for the utility work will be provided directly to the UP contractor. This is similar for other projects funded by others, i.e., privatized housing.
2. FBWSC will review designs and provide comments, or provide the designs if included early enough in the planning. Design reviews and calculations, meetings, hydraulic modeling, and additional site visits are above and beyond requirements of the existing UP contract and are treated as a change to the contract.
  - a. FBWSC recommends that the UP Contract and Modification issuance process be the appropriate contract mechanism for the provision of these services. FBWSC recommends that these additional requirements and costs be handled under the UP contract and not on a reimbursable basis from the Project.
3. Ft. Bliss will ensure that projects are designed to meet FBWSC (and TCEQ) requirements and standards. If the project will require modification to the existing FBWSC system, then Ft Bliss DOC will ensure the existing UP contract is modified with the additional scope and to reimburse FBWSC if they must fund such work.
4. FBWSC will provide necessary service agreements related to the utility service requirements and connection arrangements with the Project general contractor as required, if the project is not contracted through the mechanism mentioned in 2.a. FBWSC will provide a price adjustment proposal for the impacts of the changes to the utility infrastructure on its system and any additional O&M and R&R requirements.
5. Upon completion of new infrastructure, service will be connected when required pressure testing and sampling are completed, the modification mentioned in item 6 below is issued, and TCEQ permits are updated to assume sanitary control over the new system, as per the UP contract. This can be done by the completion of a form from the DPW transferring the system over to FBWSC and should be completed 2 weeks prior to activation of service.
6. Ft. Bliss will provide FBWSC with a contract modification to transfer ownership of the new infrastructure to FBWSC using the authority of 10 USC 2688(j), to include Bill of Sale and title transfer. This modification will include all matters related to the addition of the new infrastructure to FBWSC's system as well as meeting the "fair market value consideration" requirements of 10 USC 2688(j). The payment of FMV shall be priced and recouped as was generally accomplished under the UP contract for the initial privatization and payment of FMV (e.g. purchase price established and recoverable portion of the purchase price established creating a cost neutral transaction). Transfer of ownership is consistent with FBWSC's Certificate of Convenience and Necessity (CCN) granted by the TCEQ as the sole operator for water and wastewater service within the boundaries of Ft. Bliss.



# Fort Bliss

WATER SERVICES COMPANY

A Subsidiary of American States Utility Services, Inc.

March 14, 2011

Mr. Thomas Youngs  
Contracting Officer  
Public Works and Utilities Branch  
Mission and Installation Contracting Command (MICC)  
1733 Pleasonton Rd, Building 2021  
Fort Bliss, TX 79916

Subject: "Orphaned" Water and Wastewater Utility Infrastructure at Fort Bliss

References:

- 1) Utilities Privatization Contract No. SP0600-04-C-8625 (the "UP Contract")
- 2) 10 USC § 2688(j)
- 3) FBWSC Request for Equitable Adjustment for New Inventory Outside of Housing Areas Dated October 7, 2010
- 4) Meeting of January 26, 2011 Concerning New Inventory in Housing Areas

Dear Mr. Youngs:

I am writing to you about certain "orphaned" water and wastewater utility infrastructure at Fort Bliss. As you know, in 2004, the water and wastewater utility systems at Fort Bliss were conveyed to Fort Bliss Water Services Company (FBWSC) in accordance with the provisions of 10 USC § 2688, the utility privatization statute. Since that transfer, there has been substantial additional water and wastewater utility infrastructure constructed at Fort Bliss that has been connected to, and become an integral component of, the total utility systems used by FBWSC in providing water and wastewater services to Fort Bliss.

FBWSC has been operating these systems in good faith and in accordance with its obligations and responsibilities under its Texas and New Mexico water and wastewater operating permits. However, Fort Bliss has not transferred the new utility infrastructure to FBWSC. In addition, the UP Contract has not been modified to compensate FBWSC for the additional expenses associated with the operation and maintenance of the expanded water and wastewater utility systems nor provide for the eventual renewal and replacement of these assets. We refer to the new infrastructure as "orphaned" infrastructure because responsibility for its future operation and maintenance (O&M) and renewal and replacement (R&R) has not been explicitly established in the UP Contract through a contract modification.

In recent months, the Government and FBWSC have made progress towards a resolution of the inequities of this situation and the establishment of clear contractual authority for the orphaned infrastructure. In particular, on October 7, 2010, FBWSC submitted to the Garrison

Commander a request that he use his authority under 10 USC § 2688 to transfer to FBWSC certain new inventory constructed outside of housing areas on the Post. On that same date, we submitted a request for equitable adjustment (REA) to the Contracting Officer to cover our future O&M and R&R costs for these assets. In this same submission, we took account of the projected decrease in O&M and R&R costs associated with assets that were retired in connection with the new construction projects. We understand from recent communications that the Post is in the process of reviewing and preparing a response to these submissions. On January 26, 2011, representatives of FBWSC, the housing privatization contractor - BBC Military Housing – Bliss/WSMR General Partner LLC (BBC) – and the Ft. Bliss Directorate of Public Works had an extensive discussion about the construction of new inventory in the housing areas on the Post. In that meeting, the parties agreed that any such new inventory should be transferred by BBC directly to FBWSC. The parties agreed, further, that the UP Contract should be modified to cover FBWSC's O&M and R&R costs for any new inventory that was constructed in housing areas that were in existence at the time of execution of the UP Contract.<sup>1</sup>

We are appreciative of the efforts of Fort Bliss to resolve this longstanding issue and understand that it may take some time for the MICC to issue appropriate modifications to the UP Contract.<sup>2</sup> However, I am sure you will understand that pending the issuance of these modifications we need to be compensated for O&M and R&R of the orphaned infrastructure that is required by our operating permits. As indicated in the Position Paper attached at Attachment A to this letter, compliance with permit requirements is mandated by the UP Contract. If additional infrastructure is added to the systems covered by the permit, the permit requires that we perform certain activities on this infrastructure. Therefore, we believe that the cost of complying with permit requirements for the orphaned infrastructure is a cost of performing the UP Contract. Since the UP Contract is not currently priced to cover these costs, we believe that we are entitled to equitable adjustments to the UP Contract to compensate us for these costs plus a reasonable profit and General and Administrative expense thereon. Moreover, the timing of the "orphaned" infrastructure transfers is equally important as FBWSC has been formally notified by the Texas Commission on Environmental Quality that water quality in orphaned infrastructure connected to the FBWSC system, such as in the housing areas, must be monitored by FBWSC. If not, the inventory must be physically separated with backflow prevention equipment and the separated areas will need to obtain a public water system permit as a standalone system.

We believe that the transfers and associated UP Contract modifications will be in the best interests of Fort Bliss because it will help ensure that the Post continues to have a single, fully resourced, expert point of contact and responsibility for the operation and maintenance, and

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<sup>1</sup> The parties did not agree concerning the DPW idea that new infrastructure in housing areas constructed after the effective date of the UP Contract could be maintained outside of the UP Contract under agreements between FBWSC and BBC. This issue is outside the scope of this letter and will be the subject of separate communications between the parties.

<sup>2</sup> Having said this, we respectfully submit that DPW's recently announced one year time frame for completing its review of our October 7 submissions is too long.

Mr. Thomas Youngs

Page 3

renewal and replacement of the water and wastewater systems at Fort Bliss. Furthermore, transfer of these assets fulfills the privatization goals not only of Fort Bliss but the Army privatization program as well. We look forward to working with you on the transfers, our compensation pending these transfers and other collaborative efforts that will help improve the FBWSC UP Contract and help enhance the effectiveness of the utility privatization program at Fort Bliss.

We understand that there will be a meeting related to these issues that will involve the UP providers at the end of this month. Either at this session or a separate one with you, we would like to map out a remediation plan. Please advise us on a time that is convenient for you and other appropriate parties to hold this session. If you have additional questions this correspondence, please let us know and we will promptly respond.

Sincerely,



Granville R. Hodges, Jr.  
Vice President of Operations  
American States Utility Services, Inc.

cc: McClellan Harris III, Senior Vice President  
James B. Gallagher, Vice President of Management Services  
Daniel J. Monteros, Interim Utility Manager, FBWSC  
Delina Aberle, ASUS Senior Contract Administrator  
Gilma Odom, FBWSC Subcontract Administrator  
Chris Bouquet, Outside Counsel to ASUS  
Rob Kittel, Outside Consultant to ASUS  
Colonel Joseph A. Simonelli Jr., Garrison Commander, Fort Bliss  
Mary Dreyer, Esq, Staff Judge Advocate, Fort Bliss  
Alfredo Riera, Directorate of Public Works, Fort Bliss  
J. R. Morales, Directorate of Public Works, Fort Bliss

## Attachment A

### Position Paper Concerning Responsibility for "Orphan" Water and Wastewater Utility Infrastructure at Fort Bliss

#### Executive Summary

Utilities Privatization Contract No. SP0600-04-C-8625 (the "Contract") requires Fort Bliss Water Services Company (FBWSC) to comply with the requirements of operating permits for the water and wastewater utility systems at Fort Bliss (the "Systems"). The permits require FBWSC to perform certain activities related to new infrastructure connected to the Systems even if the government has not transferred the infrastructure to FBWSC or modified the Contract to assign long term operations and maintenance (O&M) and repair and renewal (R&R) responsibility to FBWSC. Pending the execution of the transfer and Contract modification, FBWSC is entitled to equitable adjustments to the Contract to compensate us for the costs of these activities plus a reasonable profit and General and Administrative expense thereon.

#### Background

On October 1, 2004, the government privatized the Systems in accordance with the provisions of 10 USC § 2688, the utility privatization statute. On that date, the government awarded the Contract to American States Utilities Services, Inc. (ASUS). The Contract requires ASUS and its successors to "furnish all necessary labor, management, supervision, permits, equipment, supplies, materials, transportation, and any other incidental services for the complete ownership, operation, maintenance, repair, upgrades, and improvements" of the Systems for a term of 50 years. Contract, Preamble. In return for these services, the Contract requires the government to pay a fixed monthly charge to cover all the costs associated with operations and maintenance (O&M) and renewals and replacements (R&R) to maintain the long term reliable operation of the Systems (the "Fixed Monthly Charge"). *Id.* at ¶ B.3.

In accordance with the Contract, the government conveyed to ASUS through Bills of Sale effective October 1, 2004 essentially all of the Systems then in existence. Under the Contract, ASUS and its successors pay the purchase price of the Systems through specified credits to the Fixed Monthly Charge. Contract, ¶ B.3. The government also arranged for the transfer to ASUS of the Texas Commission on Environmental Quality (TCEQ) and New Mexico operating permits for the Systems. With the agreement of the government, ASUS subsequently transferred the Contract and the permits to FBWSC, a wholly owned subsidiary of ASUS.

Since the original conveyance of Systems, there has been substantial additional water and wastewater utility infrastructure constructed at Fort Bliss that has been connected to, and become an integral component of, the Systems used by FBWSC in providing water and wastewater services to Fort Bliss. FBWSC has been operating these systems in good faith and in accordance with its obligations and responsibilities under its Texas and New Mexico water and wastewater operating permits. However, Fort Bliss has not transferred the new utility infrastructure to FBWSC. In addition, the Fixed Monthly Charge in the Contract has not been modified to compensate FBWSC for the additional expenses associated with the operation and maintenance

of the expanded Systems. We refer to the new infrastructure as “orphan” infrastructure because responsibility for its future O&M and R&R has not been explicitly established in the UP Contract.<sup>3</sup>

In recent months, the government and FBWSC have made progress towards a resolution of the inequities of this situation. In particular, on October 7, 2010, FBWSC submitted to the Garrison Commander a request that he use his authority under 10 USC § 2688 to transfer to FBWSC certain new inventory constructed outside of housing areas on the Post. On that same date, we submitted a request for equitable adjustment to the Contracting Officer to increase the Fixed Monthly Charge to cover costs of these assets. We understand from recent communications that the Post is in the process of reviewing and preparing a response to these submissions. On January 26, 2011, representatives of FBWSC, the housing privatization contractor - BBC Military Housing – Bliss/WSMR General Partner LLC (BBC) – and the Ft. Bliss Directorate of Public Works had an extensive discussion about the construction of new inventory in the housing areas on the Post. In that meeting, the parties agreed that any such new inventory should be transferred by BBC directly to FBWSC. The parties agreed, further, that the UP Contract should be modified to cover FBWSC’s O&M and R&R costs for any new inventory that was constructed in housing areas that were in existence at the time of execution of the UP Contract.

Pending the issuance of modifications to the Contracts, the Fixed Monthly Charge is only covering costs associated with the original inventory transferred to FBWSC. Therefore, the government has not been compensating FBWSC for activities pertaining to the orphan infrastructure that are required by our operating permits.

#### Analysis

As indicated above, compliance with permit requirements is mandated by the Contract. If additional infrastructure is added to the systems covered by the permit, the permit requires that we perform certain activities on this infrastructure. For example, the operating permit for the water system requires compliance with Chapter 290 of TCEQ Regulations, Public Drinking Water. Section 290.46 of these regulations, in turn, requires FBWSC to follow certain detailed minimum acceptable operating practices for the entire system, including:

- Submission of samples for microbiological analysis;
- Continuously maintaining a disinfectant residual during the treatment process and throughout the distribution system;
- Operating the orphan the system at all times under the direct supervision of a water works operator who holds an applicable, valid license;

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<sup>3</sup> It should be noted the largest single project constructed by FBWSC was the WW3 wastewater upgrade. The Contract Modification associated with the project (MOD14) explicitly states in Item 16 of the STATEMENT OF WORK “The government agrees that the infrastructure added in the expansion of water and wastewater systems which is required by this modification will be the property of FBWSC”.



- Maintaining a record of water works operation and maintenance activities and submit periodic operating reports;
- Performing disinfection by or under the direction of water system personnel when repairs are made to existing facilities and before new facilities are placed into service;
- Keeping a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service;
- Completing customer service inspection certificates prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities;
- Flushing all dead-end mains at monthly intervals;
- Flushing dead-end lines and other mains as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels;
- Using maintenance and housekeeping practices that ensure the good working condition and general appearance of the system's facilities and equipment;
- Maintaining grounds and facilities in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water;
- Maintaining plans, specifications, maps, and other pertinent information to facilitate the operation and maintenance of the system's facilities and equipment; and
- Using accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes.

We believe that the cost of complying with these and many other permit requirements for the orphaned infrastructure is a cost of performing the Contract. Since the Contract is not currently priced to cover these costs, we believe that we are entitled to equitable adjustments to the Contract to compensate us for these costs plus a reasonable profit thereon.

Moreover, the timing of the "orphan" infrastructure transfers is important as FBWSC has been formally notified by the Texas Commission on Environmental Quality that water quality in orphan infrastructure connected to the FBWSC system, such as in the housing areas, must be monitored by FBWSC. In particular, we have been informed that we must report the disinfectant level for these areas on our quarterly operating report. If not, the inventory must be physically separated with backflow prevention equipment and the separated areas will need to obtain a public water system permit as a standalone system.

#### Conclusions

Pending the execution of the transfer and Contract modification for the orphan infrastructure, FBWSC is entitled to equitable adjustments to the Contract to compensate us for the costs of compliance with permit requirements for the infrastructure, plus a reasonable profit thereon. We believe that the transfers and associated UP Contract modifications will be in the best interests of Fort Bliss because it will help ensure that the Post continues to have a single, fully resourced,

expert point of contact and responsibility for the operation, maintenance, renewal and replacement of the water and wastewater systems at Fort Bliss.<sup>4</sup> Furthermore, transfer of these assets fulfills the privatization goals not only of Fort Bliss but the Army privatization program as well.

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<sup>4</sup> Recent activity on the Patriot Battalion Complex project highlights the advantage to the Post of having a single point of contact and responsibility for all utility infrastructure. In particular, a landscaping contractor approached the DPW for assistance with marking the wet utilities lines. Since these lines have not been transferred to FBWSC, extensive communications with DPW and its contractors, the Army Corps of Engineers and FBWSC before the responsibility for marking the lines was established.

## BRIEFING CONCERNING PROBLEMS WITH WATER AND WASTEWATER UTILITY PRIVATIZATION CONTRACT AT FORT BLISS

- Utilities Privatization Contract No. SP0600-04-C-8625 (the “Contract”) requires Fort Bliss Water Services Company (FBWSC) to own, operate, maintain, repair and renew the water and wastewater utility systems at Fort Bliss (the “Systems”). Contract, Preamble.
- To fulfill these responsibilities, FBWSC must maintain and comply with the requirements of operating permits issued by the states of Texas and New Mexico. The permits, also known as “Certificates of Convenience and Necessity” or “CCNs”, require FBWSC to perform certain activities on new infrastructure connected to the Systems. For example, the permit for the water system requires compliance with Chapter 290 of Texas Commission on Environmental Quality Regulations, Public Drinking Water. Section 290.46 of these regulations, in turn, requires FBWSC to follow certain detailed minimum acceptable operating practices for the entire system, including:
  - Continuously maintaining a disinfectant residual during the treatment process and throughout the distribution system;
  - Operating the new parts of the system at all times under the direct supervision of a water works operator who holds an applicable, valid license;
  - Maintaining a record of water works operation and maintenance activities and submit periodic operating reports;
  - Performing disinfection by or under the direction of water system personnel when repairs are made to existing facilities and before new facilities are placed into service;
  - Keeping a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service;
  - Completing customer service inspection certificates prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities; and
  - Flushing all dead-end mains at monthly intervals.
- The Contract and the operating permits give FBWSC the exclusive right and responsibility to provide service in the specified service area.
  - Texas utility law provides that, in the event a retail public utility “furnishes, makes available, renders, or extends” retail water service in the service area of another utility, the utility holding the CCN may ask the TCEQ to issue a “cease and desist” order prohibiting the interference. TEX. WATER CODE § 13.252.
  - The Contract specifically states that FBWSC “shall provide utility service to **all** existing and **new customers**” in the service area (emphasis added). Contract at ¶ C.4.
  - The Contract defines the service area as “all areas within the US Army Fort Bliss boundaries to include the main cantonment area, Site Monitor Station, McGregor Range, Oro Grande Range, Dona Ana Range, and Biggs Army Airfield”. Id. at J.5.8.
- During the rapid Base Realignment and Closure project buildup on the Post, Fort Bliss has not been mindful of its responsibilities under the Contract. In particular:

- Instead of modifying the Contract to engage FBWSC to provide service to the new Brigade Combat Team (BCT) facilities, Fort Bliss has actively facilitated a violation of 30 TEX. ADMIN. CODE 291.101 by engaging Pride Industries, Inc. to provide retail water service in FBWSC's certificated area.
  - In addition, Fort Bliss has failed for many years to issue equitable adjustments to the Contract to compensate FBWSC for the costs of work required by the permits on newly constructed infrastructure.
- There is an extensive record of correspondence and other communications over a period of several years reflecting FBWSC's concerns over these issues. However, Fort Bliss has so far failed to act. FBWSC recognizes and appreciates the many demands on the attention of cognizant personnel at Fort Bliss and the initial efforts of the Post to assess asset transfer and contract modification requirements. However, to meet its obligations to its shareholders, FBWSC has regrettably had to begin the process of filing legal actions to protect its rights.
    - Pride Industries, Inc. is operating and maintaining facilities for potable water service within FBWSC's service area, and Pride is being compensated for such service. Thus, Pride is providing unauthorized retail water service and is interfering with FBWSC's CCN. By letter dated March 12, 2012, FBWSC asked TCEQ to issue a cease and desist order against Pride. TCEQ is in the process of notifying Pride of the request, and that Pride has not yet filed a response.
    - FBWSC has begun work on two potential Contract Disputes Act claims against Fort Bliss. These claims will allege:
      - Fort Bliss breached its duty to modify the Contract to include BCT area Work;
      - Fort Bliss breached its duty to modify the Contract to include Work on assets outside the BCT area.
    - Under the Supplemental Guidance for the Utilities Privatization Program Post-Privatization Transfer of Additional Army Owned Utility Infrastructure issued by the Installation Management Command on July 31, 2009, the Garrison Commander has authority to make transfers pursuant to the utilities privatization statute, 10 USC § 2688. While we believe that all the statutory criteria for such transfers have been met, we note that the statute does not require transfer of ownership of new infrastructure prior to modification of the Contract to cover work on new assets.
  - We believe that the requested modifications to the Contract will be in the best interests of Fort Bliss because they will help ensure that the Post continues to have a single, fully resourced, expert point of contact and responsibility for the operation, maintenance, renewal and replacement of the water and wastewater systems at Fort Bliss. Furthermore, transfer of responsibility for these assets fulfills the privatization goals not only of Fort Bliss but the Army privatization program as well.
  - We look forward to partnering with Fort Bliss to achieve these goals and to avoid the unnecessary expense and disruption of further legal actions.