

## TALKING PAPER

ON

### HOUSING PRIVATIZATION (The Applicability of taxes and labor laws)

#### Taxation

- Tax issues vary widely among the different states and localities
- Generally, purchases and leases made by the federal Government are immune from state and local taxation
- When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation, but rather the provisions of the particular State or local law.<sup>1</sup>
- The Government's interest shall be protected by
  - Case by case legal review
  - Use of the Federal Acquisition Regulation (FAR) contract clause entitled "Federal, State, and Local Taxes" which requires contract price to include all taxes<sup>2</sup>
- Ongoing DOD efforts have used contract clauses to require contractor proposals to assume responsibility for taxes in the absence of specific written direction to the contrary from the state and local taxing authorities.
  - Navy Privatization Webpage (FAQ Section); [www.hsgnavfac.com](http://www.hsgnavfac.com)
  - Robins RFP paragraph 3.6.6

#### Labor Laws

##### Davis Bacon Act (DBA)

- The DBA provides that on contracts in excess of \$2,000, to which the Government is a party for construction, alteration, or repair (including painting and decorating) of a public building or public works within the United States, shall provide that no laborer or mechanic employed directly on the site, shall receive less than the prevailing wage rates as determined by the Secretary of Labor.<sup>3</sup>
- Subject contracts shall contain a provision stating the minimum wages to be paid the various classes of laborers and mechanics.<sup>4</sup>
- Responsibility for determining whether the DBA should be included in a particular contract rests with the contracting officer
- DBA should be applicable to the private construction/lease of Government housing.<sup>5</sup>

<sup>1</sup> Federal Acquisition Regulation (FAR) paragraph 29.303

<sup>2</sup> FAR paragraph 52.229-3

<sup>3</sup> 40 USC 276 & FAR paragraph 22.403

<sup>4</sup> FAR paragraph 52.222-10

<sup>5</sup> Fisher Engineering & Maintenance Co., B-223359, Sept 26, 1986, 86-2 CPD 359 & Unpublished Opinion; B-234896, July 19, 1989, 89-2 CPD \*\*

- For purposes of DBA coverage, the status of a public building or public works is not so dependent on the issue of ownership but whether the project is serving a public purpose<sup>6</sup>
- Robins AFB RFP includes DBA provisions (Appendix N)

#### Service Contracting Act

- Applicable to service contracts over \$2,500 regarding minimum wages, fringe benefits, and safe and sanitary working conditions
- Service contract is one whose principle purpose is to furnish services through the use of service employees
- The Act does not apply to contracts for the construction, alteration, or repair of public buildings

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<sup>6</sup> Fisher Engineering & Maintenance Co. at page 3.