

1. Currently the FAR doesn't allow the recovery of any Contribution in Aid of Construction (CIAC) tax paid by a privatizing contractor. This would include any taxes and penalties that might accrue as a result of a disagreement with IRS over the Fair Market Value. We understand that a waiver or deviation has been requested by DOD and/or Army to resolve this potential showstopper. Can you provide the status of the waiver? Also there is an inconsistent application of this requirement. Some DESC contracts allow recovery of CIAC while some proposals have been rejected because they included a provision for recovery of CIAC. What is Army policy? Will it only be non-tax paying entities that are successful with these contracts?

We prefer a deal structured so as to avoid potential CIAC liability. It is fair to say that we have sometimes, reluctantly, accepted contingent CIAC liability. No exemption from the cost principle governing federal income taxes has been promulgated.

2. What are Army guidelines for determining fair market value? As the Service Secretary determines the fair market value (per 10 USC 2688) will the Government assume the risk for future CIAC liability? Two of the big accounting firms have advised us that it is not likely the IRS will consider one dollar a fair market value on a system that will generate revenue over a 50-year contract.

As we understand it, the IRS safe harbor for CIAC liability is replacement cost new less depreciation.

3. Since 10 USC 2688 allows a "lessor estate" as well as full transfer of ownership, is a capital lease or similar "lessor estate" an acceptable alternative? What is the current Army policy?

For the most part, we are not pursuing "lessor estate" deals. There are a few exceptions but Fort Polk is not among them.

4. Are there guidelines for what is included the government "should cost"? What will be done to ensure equality in regards to the "added value" that a contractor might bring (e.g., CMMS, enhanced quality program, etc) into the "should cost". How will the capital projects be balanced so that both sides are pricing an equivalent scope of work?

We will take accepted capital projects into account in the should cost.