

**PRIVATIZATION AND
EMPLOYMENT POLICY**

ISSUE ANALYSIS

Prepared for

the

U.S. Agency for International Development

PPC/PDPR

by

Hay Group

Washington, D.C.

June 1987

**PRIVATIZATION AND
EMPLOYMENT POLICY**

ISSUE ANALYSIS

Prepared for

the

U.S. Agency for International Development

PPC/PDPR

by

Hay Group

Washington, D.C.

June 1987

The views and interpretations
expressed in this report are those
of the author and should not be
attributed to the U.S. Agency
for International Development.

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. <u>INTRODUCTION</u> | 1 |
| II. <u>TERMS OF REFERENCE</u> | 3 |
| A. Theory and Practice of Privatization | 3 |
| B. Definitions | 11 |
| C. Major Actors of the Privatization and Employment Controversy | 12 |
| D. The Literature | 14 |
| III. <u>THE EMPLOYMENT ISSUES</u> | 16 |
| A. Importance of the Employment Question | 16 |
| Overview | 16 |
| 1. Social Issues | 20 |
| 2. Legal/Regulatory Issues | 22 |
| 3. Collective Bargaining Issues | 23 |
| B. Employment Dislocation Impact | 24 |
| Overview | 25 |
| 1. Survey of Personnel | 25 |
| 2. Assessment of Potential Job, Wage and Benefits Implication | 25 |
| C. Government Obligations | 26 |
| Overview | 26 |
| 1. Legal | 27 |
| 2. Moral | 29 |
| 3. Political | 30 |
| D. Role of Employees | 31 |
| 1. Employment Preference | 31 |
| 2. Reassignment | 32 |
| 3. Early Retirement | 33 |
| 4. Buyout | 34 |

TABLE OF CONTENTS (Continued)

| | <u>Page</u> |
|--|-------------|
| IV. <u>INSTITUTIONAL AND ADMINISTRATIVE SAFEGUARDS</u> | 35 |
| A. General Overview | 35 |
| B. Employment Safeguards | 36 |
| 1. Government Employment Safeguards | 36 |
| 2. Government Assistance for Employee Privatization Initiative | 38 |
| 3. Government-Imposed Safeguards Under Privatization Agreement | 40 |
| C. Employee Benefits Protection | 41 |
| 1. Government Guarantees Full/Partial Retirement Benefits for Dislocated Employees | 42 |
| 2. Government Provides Early Retirement | 42 |
| 3. Government Provides Fixed-Term Subsidy for All or Part of Employee Benefits. | 42 |
| 4. Severance Pay | 43 |
| 5. Buy-out | 43 |
| 6. Counseling, Training and Outplacement Services | 43 |
| 7. No Special Protection | 43 |
| V. <u>CONCLUSIONS</u> | 45 |

TABLE OF CONTENTS (Continued)

APPENDICES

- A. Key Words and Phrases
- B. Administrative Prototype and a Checklist
for the Commercialization of a
government activity
- C. Analysis of Employee Options Under
Privatization

I. INTRODUCTION

This report is a review of employment issues associated with the privatization of government activities in developing countries. This report was prepared by senior consultants at the Hay Group in Washington, D.C. for the U.S. Agency for International Development.

The review is framed around two issues:

- What are the key employment issues that should be addressed in a privatization decision?
- What administrative steps should be adopted to ensure that employment problems are identified and resolved?

This approach is designed to provide the reader with an understanding of the range and complexity of employment issues encountered in privatization transactions. Too often, the privatization debate is focused on whether there will be a loss of jobs. However, as those who have been involved in privatization work are well aware, there are a host of other equally complex and controversial employment issues. One of the objectives of this review will be to identify and describe key issues as perceived by employees who may be affected by privatization, the government as the employer and a prospective privatization employer. Most important, this review will include a review of alternative responses that employees, government and privatization companies can take to minimize the adverse employment impacts of privatization.

In addition to substantive issues of job and benefits obligations and safeguards, there are a wide range of administrative or procedural issues raised by those directly involved in privatization. For example, employees will ask:

- "When will I be informed that privatization is being considered?"
- "When and how will I be informed as to my job rights and benefits safeguards?"
- "Who will advise me as to my future employment options?"

The answer to these and other related questions will have a major bearing on the success or failure of a privatization transaction.

This report starts with an overview of privatization and a review of the major actors in the process. This is followed by a section describing substantive and procedural employment issues facing those involved in privatization and a section describing alternative ways to resolve the substantive as well as the administrative or procedural problems faced by the main actors. It closes with some thoughts on how AID can use this review to develop a relevant data base of alternative methods to minimize adverse employment impacts and to formulate appropriate policy guidelines in this area.

II. TERMS OF REFERENCE

A. Theory and Practice of Privatization

Although the term privatization appears weighty and ponderous, its meaning is simple: to identify and transfer government assets or programs to a private organization so that ultimately services can be provided more efficiently. This comes about through sale of shares of stock in state-owned enterprises, or via leasing or contracting-out assets or programs. However, the decision-making process to conduct privatization transactions is not nearly as simple in definition and practice. This process requires two essential steps. First, there should be a well-coordinated administrative, legal and political mechanism at the highest level of government to:

- Decide whether privatization is needed;
- Determine policy, organization and staff requirements to get it started;
- Create political, business, government employee and public support to make it work;
- Administer procedures that will ensure the timely, fair and efficient transfer of functions from the public to the private sector; and
- Provide monitoring and enforcement mechanisms to protect the public interest.

Second, there should be clear and concise definitions as well as procedures for the principal types of privatization transactions, such as: divestiture or sale of government assets; leasing; franchising; contracting-out; and program abandonment.

In the United States, the federal government has been involved in a limited form of privatization by using contracting out strategies for commercially oriented government activities. This work has been conducted under the provision of OMB Circular A-76. Although this approach has resulted in cost improvements in

numerous areas, most observers acknowledge that A-76 actions have fallen short of expectations. On the other hand, state and local governments have undertaken a wide range of privatization transactions, which have grown from an estimated \$22 billion to more than \$85 billion between 1970 and 1983.

The trend is unmistakable: the cost of public services spirals steadily upward, while the effectiveness and range of services deteriorates. The situation in many of the developing countries is even more dramatic. In these cases, the inability of state-owned enterprises to generate through revenues and profits the money needed for growth and investment has turned into a crippling burden. Privatization is proving to be a successful means of reducing the weight of these money-losing, state-owned enterprises, as well as tuning government programs and agencies.

At this point, a review of the privatization process, the framework within which all the analysis fits, is in order.

Privatization (or "commercialization") can be seen as involving three phases of work:

- I. Feasibility Tasks, where one determines the feasibility of and selects privatization opportunities;
- II. Commercialization Transfer Tasks, involving identification of qualified offerors or bidders, and transfer to the private sector; and
- III. Follow-on Tasks, which includes the monitoring and enforcement of privatization agreements.

These three phases of work provide the framework for a conceptual understanding of the overall privatization process, and the following description of its elements. This discussion is summarized in matrix form in the "Administrative Prototype" included here as Appendix B.

1. Feasibility Tasks

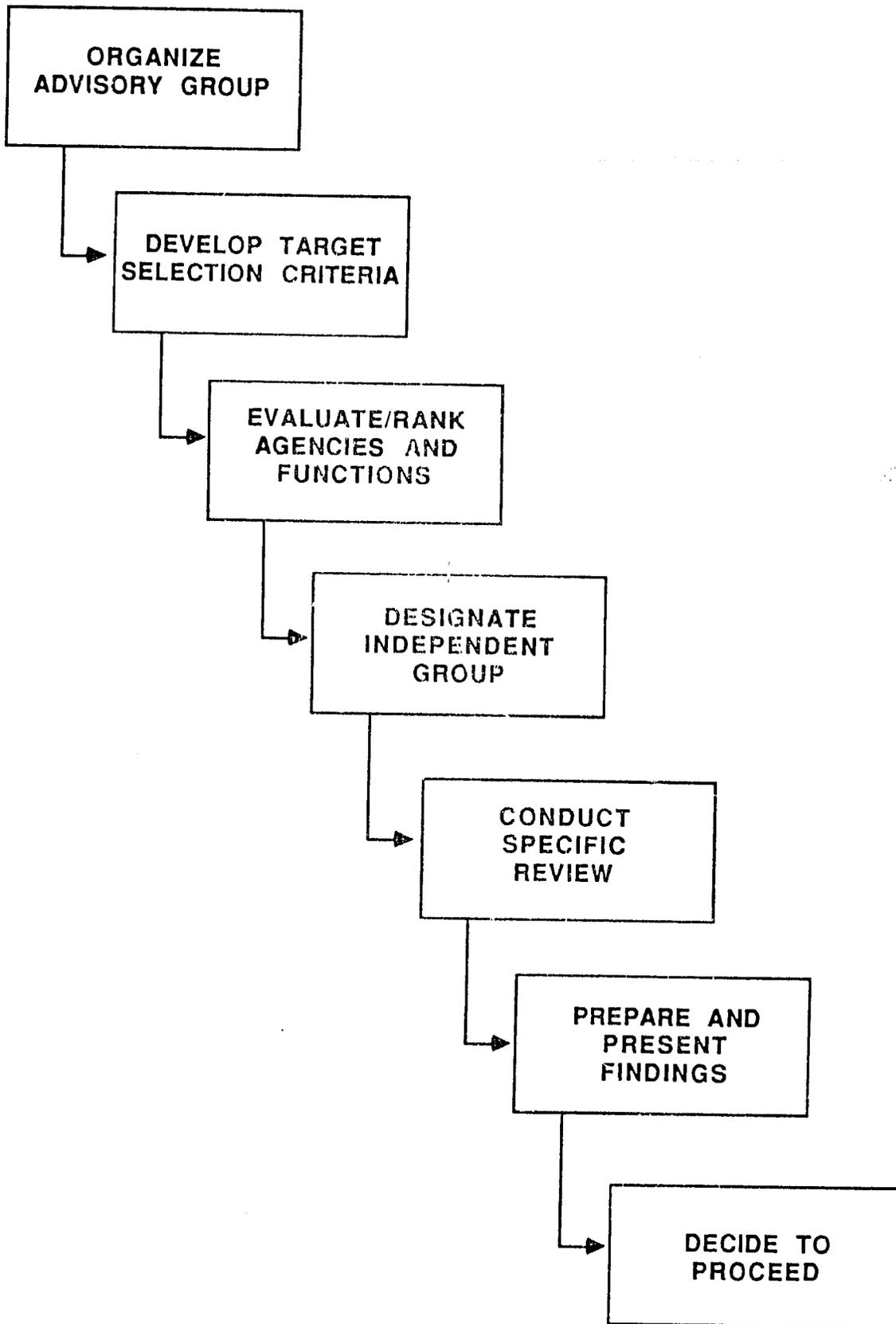
The elements of the effort that fall within this phase of the work enable one to proceed through the tasks of selecting privatization opportunities, resulting in the making of a decision to proceed. They are set forth in Exhibit II-1, and discussed in the following sections.

The first step to take is the organization a government-business-community advisory group to plan, recommend policy and program guidelines and monitor implementation. This group should include a charter, with goals and objectives, operating authority, a budget, work plan, staff support, and publicity. All these are of great importance, since all privatization actions should take place within a program in which political, business and community leaders are jointly involved via its formulation and oversight.

Next one must develop criteria for selecting candidate targets for commercialization, and for evaluating each. This is a process which involves a range of political, legal socio-economic, operational, human resources, finance, business and other weighted criteria for evaluation. Carrying it out shows forethought and gives political and business stamp of approval about the complex, controversial nature of a privatization evaluation; additionally, it provides consistency and uniformity.

The criteria come into use in the evaluation and priority ranking of agencies/functions for in-depth commercialization review. Through the use of criteria and standard methodologies, the staff can conduct a macro review. This allows governmental functions not susceptible to commercial operations to be easily eliminated and it provides priority ordering, since all transactions have passed through same screening process.

EXHIBIT II-1 FEASIBILITY TASKS



The next step is to designate an independent group to conduct each commercialization review. Specifically, the privatization overseer establishes a unique and independent review group and/or consultant team, with explicit authority, budget, work and a competent staff to conduct in-depth review of each target. Here it must be remembered that political, business, and community leadership must have confidence in the competence and objectivity of review group.

At this point, the review group conducts a multi-disciplinary analysis (with documentation) of a particular target, using approved criteria and standard methodologies, going far toward determining and demonstrating whether commercialization is justified and will work.

The group then prepare and presents its findings and recommendations to high-level government officials. This presentation also includes background report and recommendations, including an implementation plan. This detailed analysis should result in findings and recommendations for use at different stages in government decision-making. This must be the full and accurate statement of the situation to serve decision makers.

Finally, a decision to proceed (or not) with privatization of a government activity must be made. This will require a written decision from the selection official explaining reasons for or against the action and plan to proceed with the transaction, if appropriate. A formal, written decision is essential to provide evidence of continued political commitment; ensure allocation of resources for remaining tasks; and to build business and public confidence in the process.

2. Commercialization Transfer Tasks

Having decided to move ahead with a privatization action, government officials must implement a series of steps leading to the final turning-over of the entity to the private sector. Exhibit II-2 shows the range of steps required.

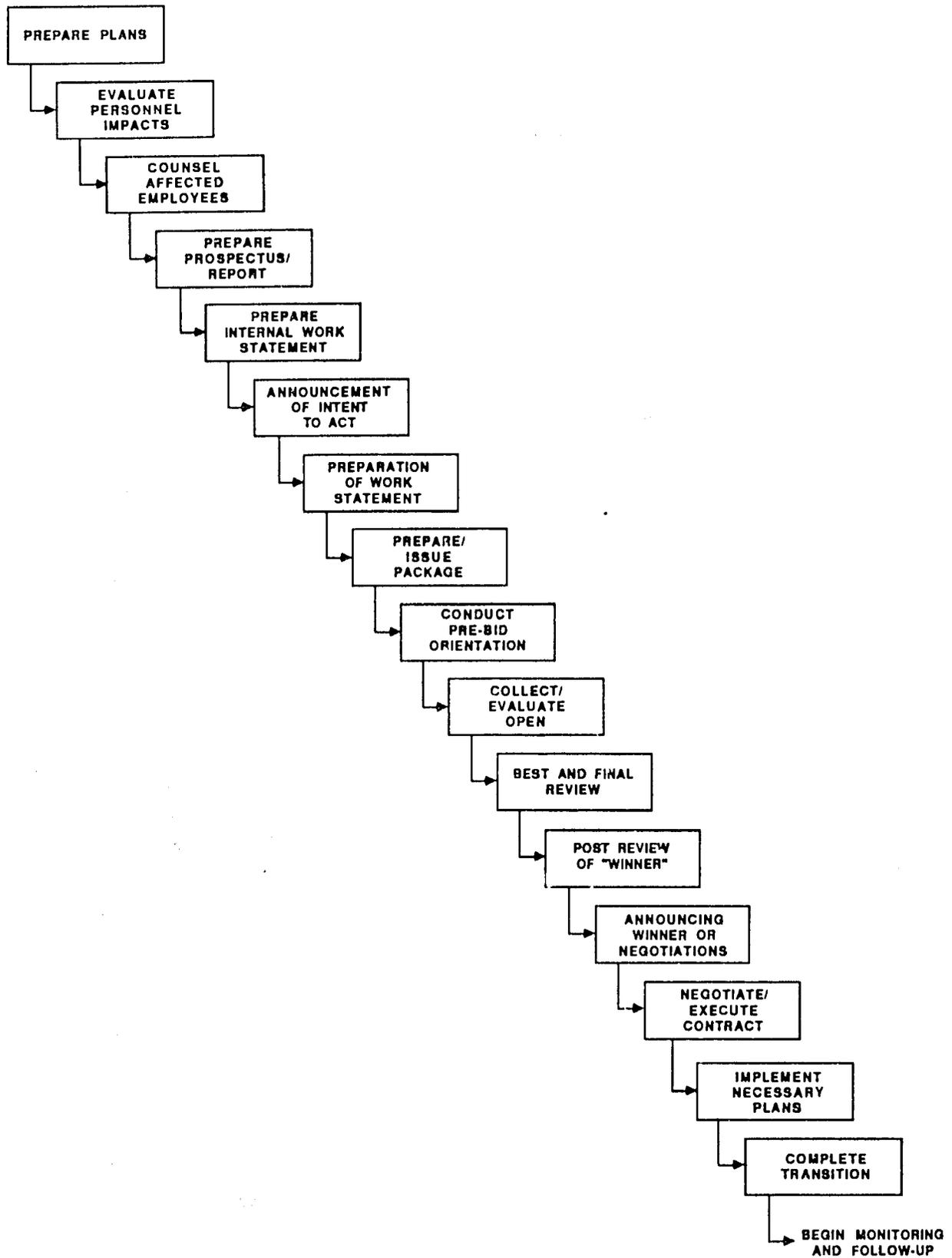
The first step is to prepare plans for the commercialization transaction, including a statement of objectives, work requirements, assignment of key personnel, schedule and budget. This provides a needed roadmap for all of the participants in the process.

Of great importance is the evaluation of personnel impacts and development of alternative approaches to minimize dislocations. This act provides vital statistics of personnel; describes impact scenarios; and examines ways to reduce negative impacts on personnel. It is imperative that government employees be informed after decision as to what steps the government will take to protect their interests.

The government must next counsel all employees likely to be affected by a transaction. This requires that each employee be counseled in person by a competent personnel specialist about employment and benefit rights and the steps being taken to reduce adverse impacts on personnel. It is essential that senior management counsel personnel on both a group and personal basis, with a written description of employment and benefit options should a commercialization decision alter the employment relationship.

Following this is a requirement to prepare an operational prospectus and background report of commercialization decision.

EXHIBIT II-2 COMMERCIALIZATION TRANSFER TASKS



It will contain all relevant operational, resource, and other background data about the organization or function being considered for commercialization. This process is useful in that it provides background data for use in a commercialization solicitation. It gives all interested parties access to a uniform and comprehensive profile of the organization or function to be privatized.

Next, the government prepares an internal work statement to be used by personnel administering the operation, and thereafter announces the action to the public. In the case of contracting out or leasing, there should then be a programmatic work statement (including performance standards and other requirements), and it should be included in the invitation (solicitation) for bids (IFB) or request for proposals (RFP). To clarify intentions and meanings for the offerors, a pre-bid conference is often used. In an asset sale, the terms and conditions of the offer must spell out all requirements.

Bids or proposals are received, reviewed and acted upon, either with rejections, negotiations of terms, or award.

3. Follow-on Tasks

After completion of the privatization action itself, it is necessary to carry out a range of follow-up tasks to ensure proper operation and attainment of goals.

First, there is a need to designate an agency to monitor performance. This includes assignment of qualified personnel, with explicit functions, authority, and resources to monitor a commercialization agreement or compliance with laws and rules.

A parallel need is to develop and implement monitoring and reporting requirements. It involves reports to the government at specified intervals on: dollars expended; amount of work produced or service delivered. Government must plan for and operate a system in which agreed-upon performance milestones are tracked to determine if the contractor (or new owner) is in compliance with commercialization agreement or the law. This should include processing public complaints and meeting employee needs.

The government must manage acceptable and unacceptable performance, by providing ways to acknowledge acceptable performance, including incentive awards for outstanding work, and to resolve and penalize unacceptable work, including termination of contract.

Within this context, there must be resolution of disputes, including set of general dispute resolution rules or rules developed for a specific dispute, including fact findings, outside mediation, etc.

Provisions for termination and closeout are necessary and involve contract provisions for terminating any agreement for a breach, for the convenience of the government, or for closeout at the end of the contract period. Among the tools is recompetition, where there is a stipulation of the rationale for requiring periodic recompetition of commercialization agreement.

B. Definitions

As privatization moves from concept to practice, it develops a language of its own. Unfortunately, too many of the words lack precision and borrow heavily from the arcane terminology of governmental departments, such as personnel and procurement. One

objective of this paper is to de-mystify as much of the privatization concept as possible, particularly in the labor and employment field.

A list of key words used to describe privatization and its component parts is contained in Appendix A.

These words and phrases are neither a complete list nor a final, definitive statement. Most of the definitions are very subjective and are derived from actual experience and interpretations of worldwide developments in privatization.

C. Major Actors of the Privatization and Employment Controversy

We believe that the employment issues emanating from a planned privatization transaction involve the interests of the government employees, the government as the employer and the prospective private employer.

The employee interests and concerns are paramount because if there is a real prospect that jobs will be lost or salaries and benefits will be reduced as a result of privatization, one can expect a public and political backlash.

As an employer, the government often has a number of employment objectives, such as: reducing the government payroll and the cost of doing business; improving the productivity of government operations; reducing and/or reassigning government personnel without undermining the Civil Service system; or encouraging new employment opportunities in the private sector of the economy.

Obviously, the prospective private employer must be concerned with a host of employment issues, including whether the existing

government workforce is able and willing to function in a profit-making environment.

In our experience, each of these groups has a major stake in a privatization transaction and a breakdown in the communication of their viewpoints can sabotage an otherwise sound privatization proposal. Thus, it is important to understand the substantive issues of each group, the motivations and rationale for their respective positions, and the costs and benefits to each group of accommodating to the other's position.

Because of the interdependent nature of employment issues, before, during and after privatization, one needs to examine the substantive issues that are likely to be encountered by these three groups.

Experience also reveals that the roles of the three groups change as the privatization transaction moves from the feasibility analysis, to a decision to proceed with the selection of a privatization entity, and finally to the transfer of employees and the implementation of a privatization agreement. For example, a government employee wants early notification of his rights and expectations and, as the transaction proceeds, wants evidence that the government has taken steps to meet its obligations to the employee, a private employer wants clear and legally enforceable conditions in a privatization agreement regarding the transfer of government employees to its payroll. This review will assess the nature and sequencing of the employment issues from the vantage point of the principal actors.

An important feature of the review will be to describe alternative ways that each of the actors can work to alleviate or resolve the employment barriers to privatization. In addition, it will describe an administrative prototype the Hay Group has

designed and used successfully to show how the concerns and interests can be given timely and proper attention.

D. The Literature

The literature on employment and privatization is quite sparse and offers very little information on the subject. However, this literature, as well as general experience worldwide indicate that employment ranks as one of the thorniest problems faced; this is especially true in developing countries that can afford few alternatives to public employment.

As U.S. AID noted in a recent background document, "labor displacement is often cited as a major impediment to privatization, and is usually very politically and emotionally charged." It goes on to observe that "labor displacement is often an inevitable by-product of privatization since the need to provide employment is a major rationale for government ownership."

In the Hay Group's recent privatization work with the Government of Guam, the following editorial appeared in Pacific Daily News (June 4, 1986):

". . . The people of Guam aren't going to buy privatization, unless it can be proved to them that their jobs or security aren't going to be downgraded or placed in jeopardy. Face it. Some 10,000 island residents work for Gov-Guam, and it is these people, along with their relatives, who really control the elections on the island, the Legislature and Government House. If the perception comes down that privatization is a thinly veiled plot to toss these 10,000 into the street or to cut back their salaries, or to make them work harder, then the idea is not going to fly."

This blunt editorial strikes at the heart of at least two of the key employee concerns - loss of jobs and reduction of salary. These and other employment issues are legitimate and must be worked out between employees, the government as the employer, and a prospective private employer.

III. THE EMPLOYMENT ISSUES

A. Importance of the Employment Question

Overview

In the early stages of any governmental discussion or analysis as to the feasibility of privatization, immediate consideration should be given to how privatization will affect government employees. What are the government's legal or moral obligations to safeguard employee jobs, minimize reductions in compensation and benefits and so forth? Should government employment be guaranteed? Should the government insist upon preferential reemployment for displaced employees with the privatization firm? Is the government willing and able to subsidize the loss of employee compensation or benefits resulting from compensation? Is the existing work force likely to be assimilated by a private sector employer? Is technical and managerial training needed? At what price, and who pays?

If there are answers to these and other related questions, then government officials preparing for a privatization decision are in a position to authorize the Personnel Department to meet with affected employees, announce the government's intentions regarding privatization, and to explain verbally and in writing the current government policy regarding employment, compensation, and benefits safeguards. This briefing should emphasize that although the privatization action is still tentative, the government is committed to keeping the employees informed at each major step of the privatization process. Most important, it should be explained that if a government activity is to be privatized each affected employee's background, employment

record, and other relevant data, including the employees' preferences for future employment will be taken into consideration and discussed on a personal basis. As we shall discuss shortly, the employee is vitally interested in knowing who will do the counseling, when it will be done, and in what form.

Despite the best laid plans, it is virtually impossible to anticipate all of the employee problems that might occur as the result of privatization. If the key employee factors are considered and approached in a thoughtful way -- which includes continual two-way communication -- then many of the less viable but real employee concerns can be identified and given timely consideration at various stages in the privatization decision-making. This approach worked well in the privatization of the Ship Repair Facility in American Samoa. Among other things, it demonstrated that the government placed a lot of weight on personnel factors, and this helped build employee confidence in the privatization process.

Unfortunately, an early, systematic examination of employment considerations appears to be the exception rather than the rule. In our evaluation of privatization transactions, we find that the financial aspects receive far more attention than employment factors. The consequences of an ad hoc approach are easy to predict. Most frequently the Personnel Department or other experts are not involved in the planning phase of privatization with the result that personnel considerations are not given proper attention.

A major failing with the ad hoc approach is the almost complete misunderstanding of the importance of employment factors in privatization and how these factors must be handled before, during and after the privatization decision. As noted, having answers to obvious employee concerns and creating a communication

network with affected employees is the key to good human relations.

This, unlike the ad hoc approach, helps combat the rumors and half-truths that are inevitable in most privatization transactions. Moreover, a privatization process that gives early consideration to employee concerns builds public confidence in the process. It facilitates the exchange of ideas and helps to identify the real problem areas between employees and privatization proponents.

The employee concerns before a privatization decision has been made can be categorized in two ways: What impact will privatization have on jobs, benefits, and future employment; and what administrative procedures will be followed to ensure that all rights and concerns are taken into account?

The first category involves such substantive issues as:

- "Why is privatization being considered?"
- "If privatization occurs, will I lose my job?"
- "What happens to my employment benefits?"
- "Will the government help me find employment elsewhere in the public service?"
- "Will I have reemployment rights with the private employer?"
- "What companies are being considered and will I be employable with them?"

These and a host of other specific questions regarding compensation, benefits, working conditions, performance standards and personnel policies can be expected. The answer to several of these questions will have to await the decision as to whether to proceed with privatization and the selection of a privatizing firm.

The employee questions concerning procedural matters can be equally challenging and very troublesome if approached in a casual way. An employee wants to know who is going to be advising him/her, when will the counseling occur during the privatization transaction, and what form the personal counseling will take. The typical questions to be addressed include:

- "Who will be assigned to evaluate my circumstances and provide personal consulting? What are this person's qualifications?"
- "Will this counseling be available throughout the privatization transaction?"
- "What procedures have been established to ensure consideration of my rights and needs?"
- "When will I be informed of my employment and benefit rights?"
- "When will the government and the new employer explain my employment options?"
- "What form will this communication take; that is, will the counseling be conducted verbally, in writing, or both?"

One extremely important factor to keep in mind is that the ultimate solution to the problems of employment in the privatization context rests with the local government, and those overseeing the process cannot expect to turn to A.I.D. for paternalistic care. In the words of the Policy Determination on Labor-Manpower (PD-52, 5/2/73):

The central responsibility for alleviating problems of skill shortages, low worker productivity, and inadequate employment opportunities, and for enhancing the quality of life for working men and women falls to the LDCs themselves."

Additionally, the Determination goes on to note that the primary responsibility for incorporating labor-manpower

considerations into A.I.D. activities rests with the missions and regional bureaus.

The social forces acting on the privatizing organization are in part driven by A.I.D. policy, which states that A.I.D. should encourage the best possible organization of the labor (employment) market, including recruitment and placement, employing counseling, labor market information, and job development as an integral part of the national program for the achievement and maintenance of full employment.

1. Social Issues

A number of issues related to the general structure and operations of the community should always be taken into account.

One of the most important categories of concern is the attention given to the employee-related effects of privatization on programs of company start-up and growth, most notably vis-a-vis small and medium sized enterprises. Will a privatization action adversely affect these firms? Will the impact be negative, for instance when limited governmental resources which might have helped the start-up process are turned to privatizing? Or will they be positive, as in the case of the Republic of Guinea (Conakry), where a massive program of terminating up to 30,000 civil servants involves the payout of early retirement benefits and bonuses for resignation; according to plans, these funds can be aggregated by small groups of redeployed personnel, and small firms started with some outside help.

In the absence of a clearly defined program to rechannel human skills during and after a privatization, one must make plans early on to accommodate the needs and desires of the employees on an individual basis. One key issue is determining where they will

be absorbed into the workforce. Can the privatizers obtain pledges for reemployment in the government? In the private sector? If they cannot be automatically taken in to an organization, is there a plan to provide them with priority in evaluations vis-a-vis other job applicants?

When civil servants are displaced by a privatization action, they often are thrust into situations in which they are extremely unskilled, thus lessening their chances of being able to support themselves and their families. In such situations, there is a critical need for the provision of training programs by the government (or a part of the private sector). Such programs would comprise both skills training/retraining, and instruction in the art of job searching and entrepreneurship. For most of the employees of a privatized government unit, the level of need is in the range of basic skills, but there will be some instances where the government should consider a high-level program of sophisticated training for the more senior staff members who are affected by the action. While they have been declared redundant vis-a-vis their prior position, there are many cases when an individual has much to offer in other fields, and strong consideration should be given to personalized assistance.

In the vast majority of developing country contexts, the government functions are centralized in and around the capital city; even in the case of outlying parastatals, employees become bunched up in population centers. Thus, at times of privatization, there is always the risk of pouring large numbers of people into communities that cannot absorb the influx, in either a commercial absorption sense, or in terms of the ability of the local infrastructure to support that many people changing (or seeking) careers. For this reason, one should always be prepared to seriously consider relocation assistance to affected personnel. Under a well conceived plan, the government can assure

that there will be an appropriate flow of people to regions and cities where they are needed, or, in the worst case, where they will be the least disruptive.

One unpleasant fact is that the formal systems of education and training in many (if not most) of the developing nations where privatization will go on are barely able to function under the normal load of school-aged citizens. Thus, when a privatization is underway, early thought should be given to close coordination with the educational authorities, with an eye to devoting resources appropriately, and making the systems better able to provide training assistance.

2. Legal/Regulatory Issues

In virtually any privatization action, there is a range of underlying legal and regulatory issues which shape and constrain most if not all activities of both the privatizers and the private sector participants.

Virtually all countries have what can generically be described as labor codes, in which the rights and duties of employees are spelled out. Without question, in many countries the codes are little more than a facade covering an inadequate system of oversight. However, many nations have adopted good and effective codes -- often in response to the pressures of investors -- and rules are enforced.

The composition of a "typical" code is impossible to ascertain, but one should always expect that certain topics and issues will be covered, for example: rights of employees on termination; participation in planning and decisionmaking; conditions of employment; and basic requirements governing the workplace and the tasks undertaken. To take only one example of

the sort of restrictions faced by privatizers, Malaysia has a rule that individuals cannot lose the benefits they had as government employees when an entity is privatized; when employees are absorbed by the private sector it must be on terms not less favorable than those previously enjoyed.

3. Collective Bargaining Issues

Issues in the area of collective bargaining in particular and labor relations in general are of great importance regarding human resource aspects of privatization. One of the premises of this paper is that employees have an especially loud voice in the process, with the ability to make a privatization action very difficult or even impossible to carry out. The mechanism that gives them this power is the formalization of labor unions and groupings, with which the government must deal.

There is a theory which has widespread support, namely that labor unions in the public sector have more strength than their private sector counterparts, with all other things being equal. The reasons supporting the strength of public sector unions are several, but among them is the fact that public administrators are constrained by public policy-based laws and regulations that are very supportive of labor organization. Collective bargaining is the rule in most situations, and plans must be well formulated for bringing about the support of the labor groups.

It is A.I.D. policy that the free flow of information regarding the impact of privatization (and on their options and opportunities for retraining or improvement of skills) is of high importance. According to the Policy determination on Labor-Manpower, A.I.D. should encourage workers, management and their associations "to make a positive contribution at the workplace, including consultation and collaboration in labor

relations, the opening of communications between workers, management and government, and improving working conditions." This is all in consonance with A.I.D.'s policy of supporting free labor unions.

Thus, plans should include the early and full discussion of the implications of planned privatization with labor. If the issues are not identified and clarified at the very beginning of the process, the chances of ultimate success are markedly decreased, both for reasons of inefficiencies flowing from worried and misinformed workers, and also the confrontational context which will exist when the privatization plans are introduced into the collective bargaining process.

B. Employment-Dislocation Impact

Overview

Few elements of the privatization process possess a power to derail the effort as great as the fear of the employees of being "dislocated." Government has traditionally been a type of employment where financial rewards are traded for long term security, or at least predictability, and situations threatening job changes are cause for alarm.

As will be shown in the following sections, the situation is not so black and white, in that privatization does not necessarily mean job loss or lower pay, or, in fact, any particular impact on an individual.

Overall, it is imperative that each case be judged on its own facts. Will people be put out of work (was the organization overstaffed)? Will pay be lowered (were the public employees paid too much or too little)?

1. Survey of Personnel

The impact of the dislocation on employees can be made more positive via a number of steps, the first of which involves the determination of the nature and profile of the affected workforce.

This involves the planning and implementation of a survey of the personnel of the agency or parastatal. How many are there? In what positions? What is the skill and experience level of the workforce, or of individuals? What are the expectations of the employees regarding the privatization, and on what are the expectations based?

The survey serves several purposes in the privatization process. In the first place, it brings the employees into the action, and gives them a chance to be a part of the ongoing activities, rather than being mere pawns. Also, it provides decisionmakers with substantive information upon which to base future plans and operations.

2. Assessment of potential job, wage and benefits implication

The first order of business should be to describe in the most explicit terms the employment rights, obligations and duties of the employees, the government and the private employer.

Although there is no best way to approach this delicate transition phase of privatization, a scenario observed at the Ship Repair Facility in American Samoa comprised the following steps:

- The government Personnel office conducted in-depth interviews with all employees, identified preferences for regular or early retirement, reassignment to another government, or reemployment with the private employer;

- The Personnel office prepared specific employment options for each employee plus an explanation of how their retirement, health and life insurance and other benefits could be handled under the employment options;
- The private employer conducted an in-depth review of the personnel record and work history of each employee for use in preparing a preliminary job slot;
- The private employer prepared a written statement describing the employment policy and practices it would establish, and held a welcoming meeting with the new management and all of the affected government employees. It explained its employment rules, answered questions, and, together with government officials attending the meeting, explained how they would screen and select employees for transfer;
- The private employer interviewed each employee, determined his/her interest in employment and, if appropriate, extended a written offer of employment. An offer included the planned work assignment and duties, compensation and benefit entitlements, training and career opportunities and so forth; and
- Each employee was given the opportunity to consider the offer and to respond in writing within a fixed period.

C. Government Obligations

Overview

One must never lose sight of the fact that the government is burdened with a number of obligations, both explicit and implicit, to employees during a privatization. Additionally, since the government acts in a capacity of trustee or fiduciary for the interests of the public, there are also a large group of obligations relating to the protection of the community.

Overall, the government must honor its commitments to the employees, both as individuals and in organized groups (e.g., collective bargaining or employment agreements). It must comply

with the terms and conditions of the particular sale or contract, as well as with any ad hoc understanding reached with affected parties.

Failure to meet these obligations fully, and in good faith, will often result in expensive and resource-draining litigation. In a not-atypical case, the results of failure to comply can include the blockage or ultimate demise of the privatization effort.

1. Legal

The legal issues relating to the human resources aspects of privatization relate to a large degree to compliance with agreements between the government and its employees, the private organizations and individuals with which it is dealing, and the community as a whole.

These issues are shaped by the terms of the understandings, the law of public contracts, of securities sales, of governmental operations, and other, more specialized considerations. The obligations and requirements are spelled out in the text, and the cases provide clarification.

One example of a clear set of legal rights and responsibilities is the Sri Lankan Draft Bill for Conversion of a Public Corporation or a Government-Owned Business Undertaking Into a Public Company, which provides that "employees of an entity on the day preceding the day of transfer, cease to be employees of the unit, and shall, if not offered new employment or renewal of contract with the private operator, be eligible for payment of compensation and gratuity, as determined by the appropriate minister." This is a good example of a case where the rights of the employees are being protected by the enforcement of legal obligations.

In addition to externally imposed rules, there are many requirements that are created de novo by the parties to the privatization.

For instance, the government can include in a privatization specific employment factors that it will insist upon and those that are negotiable. An illustrative listing of the conditions governments are most likely to insist upon includes:

- Full compliance with all national and local labor laws and regulations;
- Hiring preferences, including specific quotas, for local workers at some or all levels of employment;
- Provision of educational and training opportunities for all or selected employees who will be transferred from the government payroll; and
- Preparation and implementation of an employment opportunity and affirmative action plan which will be prepared periodically by the private employer and will define the responsibilities and the timeframe for compliance with the employment conditions and terms of the agreement.

While direct control is somewhat difficult in sale contexts, contracting out is less of a problem. The employment provisions that are most often left open for negotiation of the final award include such items as:

- The manner in which the government and the private employer agree to counsel with, screen, and select employees for transfer;
- The form and timing of the transaction from government to private operation;
- The specific compensation and benefits levels, work rules, performance standards and personnel policies of the private employer;

- The nature, extent, timing and cost-sharing arrangement for the training of local employees; and
- The details and scheduling of any planning, implementation or reporting requirements imposed by the government on the private firm.

This is not intended as a complete itemization of employment factors that an offeror and the government would need to determine a private firm's qualifications to manage or take over a government operation. Hopefully, the government's statement of requirements will be clear and explicit regarding the ways in which it wants to minimize employment dislocations, enhance local employment opportunities, and to upgrade the skills and managerial capabilities of the existing workforce.

2. Moral Issues

The range of "moral" issues in the area of privatization and employee concerns is broad and closely aligned with the legal considerations, since the laws and rules are, in fact, in place to enforce underlying moral precepts of the community. What all of the moral concerns boil down to is the basic consideration that the organization undergoing privatization and the organization assuming control must both take account of the duties they have to the workers. Some of these duties are explicitly spelled out in published statements, and some are implicitly created through patterns of behavior between the parties.

One key rule is based on the fact that questions regarding the rights of affected employees are partially impacted by the dictum that A.I.D. should encourage "freedom of choice of manpower training and employment and the fullest possible opportunity for each worker to qualify for and use his skills and endowments in a job for which he is well suited."

Further, A.I.D. support for training programs can be found in the A.I.D. Policy Determination on Labor-Manpower, where it is stated that: "the skills training, particularly on-the-job, capabilities of government employers, labor unions, and professional societies should be strengthened, so that increased training and job opportunities are available to all workers organized and unorganized, in both rural and urban areas, and especially to the unemployed, underemployed, and inadequately trained employed workers."

3. Political

Throughout the privatization process the political considerations are among the foremost concerns of decisionmakers. Few constraints have a greater impact on the efforts of the privatizers than the control held over the operations of the organization by the political powers of the government.

While a wide range of pathways exist to link the business, technical and managerial concerns with the political, one of the foremost is that which relates to the employees of the organization. Whether their voices are united, through a labor union, for example, or unorganized, the concerns of the affected personnel of the entity being privatized are a favorite focal point for political decisionmaking.

While to a close-up observer, the linkage between what one does with (or to) one's employees and the political process is weak, when the scene is observed from a distance the fate of the civil servant, the use of tax monies, and the role of the new owner/operator are intimately entwined with the decisions being arrived at by elected or appointed officials and overseers.

D. Role of Employees

Finally, one must look at the employees being displaced and their role in the process. In the broadest sense, the decisions are made from among several options: requiring the contractor/buyer to consider using displaced employees; to require employment of them for a limited period of time; or by requiring the use of a stated percentage of them, possibly by employee class.

Arriving at the point of making these choices is a multi-step process.

1. Employment Preference

Preferential selection of affected employees in jobs in either the government or the private sector is a very important issue in any privatization. One of the most widely used mechanisms is the right of first refusal, in which a firm taking over the operation is required to make a bona fide offer to the affected employees before any other persons for a given range of jobs. The scheme is widely used, although its utility is diminished in many instances because of the insertion of the term "qualified" employees when describing whom the obligation is owed to.

Often governments can protect themselves against misuse of the term by pre-screening potential contractors. In these cases, private providers have to show how they would integrate various classes of workers into their workforces. Although this would discourage many firms from bidding or making an offer, this knowledge is essential in many contexts, and has been shown to work well.

Among the methods for lessening the negative aspects the approach holds for the firms, the government could: 1) compensate private firms for retaining unqualified workers, or 2) subsidize the salaries of the former public employees who were hired at lower salaries because they were "unqualified."

As an example of one approach to the issue, the Terms and Conditions for the Privatization of Jute and Textile Mills (27/9/82) of Bangladesh provides:

"The denationalised companies will take over all officers, staff and workers in employment in the enterprises on the date of transfer along with liabilities of service benefits. They will also take over an agreed number of officers and staff from BJMC Head Office and Zonal Offices, likely to be declared surplus after transfer of these mills to denationalised companies. There will be no termination or retrenchment for one year from the date of transfer."

A.I.D. supports the process of career and job placement and policy states that "effective employment services are required to assist workers in finding suitable employment, and employers in finding the best qualified workers, and to disseminate information on labor needs and employment opportunities."

2. Reassignment

Reassignment to other positions within the government or at other parastatals is a commonly used mechanism. When operating under a no layoff/equivalent transfer policy, the government guarantees continued employment to those employees who want to remain in government service. In this sort of approach, there is always a problem in effecting equivalent transfers due to mismatches in skills and underutilization. In some cases there may even be demotions and loss of seniority and benefits.

Among the solutions available are: one time lump sum payments; hardship pay for less skilled job performance; a simple guarantee of protection of benefits; and education benefits, such as tuition payments. All of these entail measurable financial cost to the government.

Another mode of approach is via "phasing-in." This amounts to slowing down the privatization, thus allowing more time for employee adjustments, and it also allows for more empirical performance evaluations. One means of effecting it is through not filling vacancies. Also, if some layoffs are necessary, there could be a government-wide reserve list whereby displaced employees receive first consideration for any new job openings. The negative aspects of the approach are significant, however, since phasing in the changes not only delays the privatization program, but it also markedly decreases the value of the entity being privatized, since private organizations do not wish to be caught up in the bureaucratic requirements of phased reassignments.

Training programs are a key component of a reassignment program. It is established A.I.D. policy that there be an encouragement of training programs, both on the job and more formally undertaken by the employer. The same policy applies to retraining and skills upgrading initiatives.

3. Early Retirement

The process of inducing the early retirement of government or parastatal employees is a viable one in developing country privatizations, since what is required is effectively the speeding up of a process whose structure is already in place. The extra costs to the government flow from payments of retirement benefits and annuities to the retirees ahead of schedule, and from the payment of any early retirement bonuses that are earned by the

personnel who are leaving. In this regard, private firms often use 5:5:1 or 3:3:1 plans, in which five (or three) years are added to an employee's age and length of service, and the retiree is given four weeks pay for each year of service.

An interesting case study in early retirement in the developing world is the Republic of Guinea.

4. Buyout

When there is sufficient capital or credit accessible to the employees of a government agency or corporation, it is often possible to reconstitute the organization into one more amenable to employee ownership, and transfer the shares to all (or a group of) the workers. Through either a direct purchase, or through a trust-like entity (such as an Employee Stock Ownership Plan - ESOP), the employees can take title to the organization just as any other outside investor would do.

Buyouts have been shown to be very effective tools in places where availability of capital is not a problem. For example, the National Freight Corporation in Britain was purchased by a consortium of employees, pensioners, and several banks in 1984. The government netted about £5 million, and the remainder was used to offset a one-time contribution to the NFC pension funds, and for overhead in the sale.

Where capital is not sufficiently available to meet all the needs of the employees, other sources can be co-financers. Also in the UK, the Victualic plastics firm was bought by employees. There 74% of the workers financed 40% of the total buyout, with the remainder being provided by a banking firm and other investors.

As might be true in developing countries, in cases where the employees have little or no money to invest, schemes can be developed which allow for the purchase of the entity conditional on later infusions of money. This can come via a guaranteed government contract for the services of the newly privatized firm. Another method, being put into effect in Guinea, involves government help in assembling a number of individuals who will pool their pre-retirement and resignation bonuses, and invest in enterprises.

IV. INSTITUTIONAL AND ADMINISTRATIVE SAFEGUARDS

A. General Overview

It has been shown in case after case that one of the primary impediments to successful privatization efforts is the failure of the government officials to adequately plan for and address the many concerns of affected public employees. These concerns may be based on both real or imagined issues, but in any case they are of great importance due to the vast range of mechanisms the employees have to slow or halt privatizations.

There are a number of ways in which government can approach the problems; each mechanism has its own strengths and weaknesses, and is therefore intended to be targeted narrowly at specific situations. Throughout the developing world, many governments' ongoing problems in carrying out privatization flow directly from the failure to address employee concerns; this failure, in turn, can be traced to a lack of knowledge of the range of concerns, their importance, and the mechanisms available to deal with them.

In discussing these issues, continuing reference must be made to the early steps in the model administrative processes second

phase, namely identifying needs and responses and counseling employees, noticing how it fits into the larger scheme.

B. Employment Safeguards

The first category of needs can be looked at in terms of the government's need to safeguard the actual employment of the workers during privatizations. Here the government can provide direct safeguards, can assist employees in finding other types or sources of employment, or can require that the organization taking over the ownership or operation of the government program provide such safeguards to individuals or classes of employees.

1. Government Employment Safeguards

a. Employment Guaranteed, Continued Government Employment, With no Loss of Rank or Compensation

In the direct safeguards area, governments often guarantee continued government employment, with no loss of rank or compensation; this is a very effective tool for minimizing employee resistance to privatization, and minimizes exposure to breach of employment contract lawsuits. Likewise, it ensures the integrity of the government's employment system and gives the company a free hand to ignore or make employment offers to affected civil servants. On the other hand, this mechanism does little to reduce or contain levels and costs of government employment, and engenders problems of employee placement, performance and morale, in addition to undermining the ability of the company to obtain or retain a qualified local work force.

b. Employee Job Retraining With Guaranteed Government Employment, But no Rank or Compensation Protection

Related to the first method is the provision of job retraining with guaranteed government employment, but without rank or compensation protection. In such cases it is possible to maintain employment rights without undermining sound personnel management practices, thus reducing employee resistance to privatization. The inherent negatives relate to new costs and issues of capacity to meet training needs, minimum reductions in government employment and costs, and problems of employee placement, performance and morale.

c. Preferential Government Reemployment Rights When Qualified for Available Job

Similarly, there can be a grant of preferential government reemployment rights when an individual is qualified for an available job; this places affected workers in special employment pools of the type long used in other contexts. Here there is an implicit recognition of government's commitment to assist in reemployment. By encouraging employees to seek positions with the privatizing entity, this mechanism is much more viable as a mode to reduce or contain government employment levels and costs. On the other hand, it lessens employee support for privatization and can potentially destabilize the government employment system.

d. No Reemployment Safeguards

In many cases the government provides no reemployment safeguards for its affected employees. While the overt benefits inherent in this are real, such as maximized shrinkage of government, greater administrative ease in the process, and increased cost reductions, there are very serious -- and

potentially fatal -- problems, such as heightened employee resistance to privatization, destabilization of the government employment system, and reduced ability to attract qualified people.

2. Government Assistance for Employee Privatization Initiative

a. Employee Acquisition Plans

One of the most talked-about forms of indirect assistance involves employee acquisition plans, in which a government aids employees in forming the mechanisms needed to own and operate the privatizing organization. One variation on this theme is support of equity purchases by individuals, in which government expertise and capital is offered to affected employees to better enable them to directly purchase the ownership of the firm. Closely linked to this is the Employee Stock Ownership Plan (ESOP), where employee and employer contributions can be used to capitalize a special fund which holds the organization on behalf of the employees.

This approach provides employees with an opportunity to become equity holders with new incentives to increase productivity, while at the same time giving the privatizing entity a skill and knowledge base. Further, it expands the private sector and capital investment base of the community, along with a high degree of local control over privatized operations. The costs, however, are not insubstantial. There is, first, an extra administrative cost added to the action. More basic, though, are fundamental issues inherent in employee ownership and operation. If no new management is included in an ESOP, operational inefficiencies and other problems that caused the government to privatize may be perpetuated, there is no automatic relationship between employee ownership and increased productivity, and, in cases where ESOPs replace pension plans, business failures would leave employees with no retirement coverage.

b. Employee Takeover Under Privatization Set-Aside

As a variation on the above themes, it is possible to structure an employee takeover under a privatization contract set-aside; here the employees can establish a business entity which would be guaranteed an operating contract with the government, which would in turn stimulate outside private investment in the venture. In these cases the infusion of government capital increases the likelihood of the success of the venture, but it is a time-consuming and costly process, and there is significant government interference with the competitive forces of the marketplace. The evolving "Fed Co-Op" program in the U.S. government will prove to be a good example of the strengths and weaknesses of this approach.

c. Employee Privatization Takeover After Fixed-Term Expatriate Contract

If the employees are unable to build and operate an enterprise which can immediately take over the government program, it is possible to give a fixed-term operating contract of up to several years to a third party, and allow the employee group to develop the requisite skills and resources. This is a more complex process that has several weaknesses, such as difficulty in finding qualified firms that will agree to a period of five to 10 years, and the problems inherent in establishing an enforceable agreement and providing for a staged transition.

d. No Assistance

If a government provides no assistance to employees, the competitive market system operates without government involvement or preferred treatment for government employees.

3. Government-Imposed Safeguards Under Privatization Agreement

If the government is unable or unwilling to undertake a program of direct assistance to employees, it is possible to require that the private owner or operator of the government entity do so.

a. Every Employee Granted Right of First Refusal

One of the most popular mechanisms is to require that the firm offer affected government employees the right of first refusal, thus allowing them to explicitly decline the private jobs created under privatization; in some cases the requirement relates to all employees, and in others to a percentage of employees or those in predefined job slots.

Allowing the right of first refusal for all employees forces the government and company to work closely and fairly with the employees to assess their capabilities, interests and potential, and to ensure meaningful job placement. This requires that the government and company identify unqualified workers and mutually agree upon retraining or other solution. However, it may impose unacceptable burdens and discourage private investment and response to the privatization agreement, and the increased costs may reduce cost-saving opportunities for both the government and the company.

b. Percentage of Employees Have Right of First Refusal

If only a certain percentage of employees are given the right of first refusal, additional problems arise in the nature of determining which employees are to be protected and which are not.

c. Percentage of Workforce Must be Local

Another important requirement often imposed on privatizing firms is that an agreed-on proportion of their new-hires (or their entire workforce) consist of local residents. This is especially important in insular situations, or in areas where localized unemployment problems would be seriously exacerbated by an influx of "outsiders." Carrying this out is an important indicator that the government has created a contractual or legally enforceable safeguards that a company must abide by local employment, economic and social preferences. Further, it helps upgrade local managerial and workforce capabilities, particularly in privatization areas that cannot be met by existing local businesses. On the other hand, if the percentage is too high or the labor market cannot provide required skills, there may be unacceptable burdens imposed on the privatizing company.

d. No Requirements

If the government imposes no such requirements, it is an indication of a commitment to allow the company to manage without government interference, an act likely to induce greater business interest in privatization. However, this fuels anti-privatization arguments that the program is insensitive to local employment, economic and social controls and preferences.

C. Employee Benefits Protection

In many cases the best way to approach worker needs is not by seeking to protect the actual jobs of individuals, but rather to protect the benefits and compensation they have accrued as government employees.

1. Government Guarantees Full/Partial Retirement Benefits for Dislocated Employees

Retirement benefits are almost always among the principal considerations in the planning and concerns of public sector employees, due to traditionally favorable public retirement programs. One approach to meeting needs in this area is for the government to guarantee full or partial retirement benefits for dislocated employees, thus eliminating the complaint that non-vested monies are lost. Such a program tends to minimize employee resistance to privatization, and therefore exposure to claims of breach of employment contract. On the other hand, such programs can substantially increase government exposure to payout costs, may be actuarially indefensible, and could undermine the integrity of the retirement program.

2. Government Provides Early Retirement

Another retirement-related program receiving widespread review is the granting of early retirement to affected employees who meet certain eligibility criteria. This program also minimizes the resistance to privatization of those who benefit by protecting the vested interests of employees who are close to retirement and reduces the government payroll. As for disadvantages, it could substantially increase the government's near-term cost liability, and may weaken the retirement program on an actuarial basis.

3. Government Provides Fixed-Term Subsidy for All or a Part of Employee Benefits

The transition into a private retirement and benefits system in some cases is complicated by the fact that there is not always complete compatibility. In such situations, the government can

provide a fixed-term subsidy covering all or part of the employee benefits, in effect providing a temporary safety net until an employee is fully protected by private programs. This allows the employee the time to make the transition into a different benefits system, although added government costs do arise.

4. Severance Pay

In terms of more direct compensation, severance pay for adversely affected employees is widely used; thus, in a payment of predetermined size, the individual is provided with sufficient resources to make a successful transition into a new job, and encouraged to forego claims for financial injury against the government.

5. Buy-Out

Related to this would be a lump sum payment in the nature of a "buy-out". The distinction is that the latter are most often established in a case-by-case manner under the facts of a privatization action.

6. Counseling, Training and Outplacement Services

Finally, often employment contracts mandate the provision of counseling, training and outplacement services by the government. These can be given to affected employees after they leave government service as well as during their tenure.

7. No Special Protection

The failure to provide any direct assistance ensures minimizing of program costs to the government, but it is unfair to employees with substantial tenure, and it increases the chance of lawsuits.

As in the use of the administrative model previously described, this discussion is summarized in a matrix format at Appendix C.

V. CONCLUSIONS

In general, the work experience and quantification of privatization results in LDCs are sparse, with virtually no research findings and data regarding employment dislocations, employee benefits protection and other related problems. We noted that neither the findings emerging from the British experience with the denationalization of state-owned enterprises, nor the reported U.S. experience with the contracting-out of the federal government's commercial activities under OMB Circular A-76 shed much light on the employment questions of concern to developing countries.

Another major constraint in performing the proposed review was the absence of a conceptual base and some practical terms of reference that would help frame the employment issues in a privatization context; that is, moving from a government employment setting to a private-sector work environment. This report was designed to address this limitation. The definition of key words and phrases, development of a list and analysis of job and employee benefits issues and alternative solutions, and a suggested administrative mechanism for handling the issues are the main elements of this report. In our view, this work provides the logic and structure around which a more detailed survey can be conducted in a more timely, orderly and cost-effective manner.

Most important, this work will facilitate easier dialogue and the exchange of ideas, all of which can create a solid foundation for the formulation of policy guidelines and program alternatives. This work will provide a springboard to meet the formidable policy objectives outlined by U.S. AID in the above-referenced agenda, as follows:

- Develop new policy approaches that could demonstrate to the host government (1) possible changes needed in LDC labor codes (from a generic standpoint); (2) that there are effective ways of dealing with unemployment consequences; and (3) that employment could be generated by privatization since state assets in many countries are often under-utilized;
- Examine the policy issues involved in labor compensation, such as severance pay vs. retirement pay; and
- Examine the policy issues involved in providing training for displaced and non-displaced workers, before vs. after privatization.

APPENDIX A
KEY WORDS AND PHRASES

A-76 The shorthand way to refer to either the Federal Government's contracting out evaluation process, or OMB Circular A-76 on which it is based. This is the official pronouncement of the U.S. Government in which Federal policy on the use of the private sector to perform "commercial activities" of the Government is spelled out.

ABANDONMENT The act of completely ceasing to carry out a program or operate a corporation, without regard for whether the terminated activities will be picked up by another (public or private) body.

BID The tender or offer put forth by a private entity in the course of a contracting action. Bids (as distinguished from proposals) are usually straightforward statements of cost to the government, or payment to the government, offered by bidders with regard to a well defined set of work requirements.

COMMERCIAL ACTIVITY An activity of a government, whether carried out by an agency or a separate corporate body, which is appropriate for the private sector to do.

CONTRACTING OFFICER The member of a government team who has been delegated the power and authority to execute contracts, and to modify or terminate them as appropriate. In more complex contracting actions, there can be several types of contracting officer, i.e., Procuring Contracting Officer (PCO); Administrative Contracting Officer (ACO); and Terminating Contracting Officer (TCO).

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE The technical staff member who acts as the contracting officer's eyes and ears in technical matters relating to the contract performance. The COTR lacks the contracting officer's powers to commit the government.

COST/BENEFIT ANALYSIS The rigorous analysis applied by a government to a project or a program, in which the total costs of the subject are ultimately divided by the monetary value or its benefits, yielding a fraction. Projects and programs with lower fractional values are more desirable from a cost/benefit standpoint than are ones with higher values.

COTR (or CTR) Contracting Officer's Technical Representative.

DIVESTITURE The act of ending a government's ownership of certain assets (e.g., corporations, real property, non-physical rights) through sale or donation to another party, often the public.

EMPLOYEE BENEFITS The immediate or deferred benefits or entitlements, excluding employee compensation, which an employer provides, in whole or in part, to its employees. These benefits include, but are not limited to: annual sick and compassionate leave; health and disability insurance and forms of medical care; life insurance; regular, early and disability retirement; severance pay; and so on.

EMPLOYEE CASH COMPENSATION The compensation, salary and other income, either gross or net of tax, which constitutes an employee's current entitlement under the terms and conditions of his/her employment.

EMPLOYEE COMPENSATION (OTHER) This includes all other remuneration in cash or in kind to which an employee is entitled by virtue of employment. Examples include: housing allowance, automobile, gas and food allowances, discounts in products or services (e.g., travel, loans), and so on.

EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) The term applied to a process in which corporate assets (usually embodied in stock shares) are owned collectively by the employees of the corporation. This can be an effective way to transfer ownership of a state-owned enterprise to the employees.

FLOTATION The sale by a government of the ownership of a corporate entity through the sale of stock shares to the general public (with any exceptions being minor).

FORCE MAJEURE An occurrence or event that is outside of the control of the parties. An appropriate clause in the contract will relieve the parties of some or all liability for non-performance when it was caused by force majeure. An example is a hurricane destroying a facility.

FRANCHISE The granting of an exclusive or semi-exclusive right by a government to private interests to carry on specified activities or sell certain products within an area.

GOV'T FURNISHED PROPERTY/EQUIPMENT/MATERIAL Physical property, equipment and other material that is owned by a government, but necessarily supplied (loaned or given) to the contractor to enable him to effectively perform the contract.

ICB International Competitive Bidding

49

**INHERENTLY
GOVERNMENTAL
FUNCTION**

A program or operation performed by a government which is of such a nature that it is inappropriate for private sector performance, for example, national defense or the levying of taxes.

**INTERNATIONAL
COMPETITIVE
BIDDING**

The formalized system of contracting procedures utilized by the World Bank and other institutions, outlining the steps and requirements which govern the procurement of goods and services by a government.

**INVITATION FOR
BIDS (IFB)**

The public announcement by a government that the period has opened during which it will welcome offers from private firms to supply the goods and/or services enumerated in the invitation. Responses to Invitations for Bids generally are limited to monetary statements, along with ancillary promises to abide by certain rules. (Contrast Requests for Proposals.)

LEASE

A contractual arrangement under which money is paid for the temporary use of property; ownership does not shift under the lease.

In one type of lease situation, the government is the lessor and the private party the lessee; here money comes into the government (e.g., leasing the right to use natural resources). In a second type of lease, the private firm is the lessor and the government the lessee; in this instance, money is paid out by the government (e.g., leasing motorpool vehicles instead of buying).

**LIFE CYCLE
COST**

A cost of a good or service which has been computed by taking into account all necessary expenditures by the buyer over the lifetime of the item's use. Thus included are maintenance, spares, depreciation and other cost considerations above and beyond the basic purchase price of a similar item.

**MANAGEMENT
CONTRACT**

A type of contract in which a government is paying a private firm to provide personnel skilled in management, to oversee and run SOEs or programs for the government. Equipment, supplies and lower level staff are provided by the government.

OFFER

The package of price, product, and terms and conditions a firm presents to a government in a procurement action. When the offer is accepted by the government, a contract is formed.

| | |
|-----------------------------|--|
| PERFORMANCE BOND | The promise to pay a set amount of money, backed by a surety, made to a government, if the contractor does not perform a contract in full compliance with the terms and conditions and other internal and external requirements. |
| PLACEMENT | The sale by a government of the ownership of a corporate entity through the sale of stock shares to a finite and targeted group, rather than to the general public. |
| PRE-BID CONFERENCE | A gathering, sponsored by a government, which is open to all potential offerors. At the conference information is disseminated, questions answered, and all parties are given opportunities to receive information needed to make them competitive and effective offerors. (Also known as "bidders conference".) |
| PRIVATIZATION | The act of a government transferring some of its ongoing program responsibilities to the private sector. This can be through: <ul style="list-style-type: none"> • Sale • Lease • Contract • Abandonment • Or other variations |
| PRIVATIZATION ACTION | The part of an overall privatization initiative in which a particular government program or entity is being privatized. General concepts must here be translated into finite and firm statements about individual fact situations. |
| PRIVATIZATION ASSESSMENT | The early process in the privatization initiative in which the evaluation is made as to whether privatization is the proper approach to meeting the needs of public service delivery, and, if it is, which programs or operations to privatize. |
| PROCUREMENT ACTION | The actual operations within the privatization program which relate to a single entity or program that is being privatized. The action might be one of contracting out, leasing, divestiture, abandonment, or some combination of these. |
| PROPOSAL | Response by a private party to a government's request for proposals (RFP) in which the entity describes what it will provide to (or do for) the government, along with information on cost. |

Proposals are used when the need includes uncertain requirements, or when creative options are desired. When a proposal is used, a negotiating period for final clarifications is almost always required.

PROSPECTUS

The summary of relevant information about the form, operation, environment, and terms of sale of a state owned enterprise. It is issued by a government before the period of sale opens, and complies with the requirements of the stock market in which the shares are being offered.

REQUEST FOR PROPOSALS (RFP)

The formal publication and announcement by a government that is seeking the submittal of proposals from the private sector, relating to the provision of goods or services.

Since (in contrast to the informational announcement and RFQ) the RFP is the official invitation to the private sector to prepare formal offers to the government, it must clearly state the need to be addressed, the schedule and conditions for response, and the underlying terms and conditions of the contract that will be awarded.

REQUEST FOR QUOTATIONS (RFQ)

The formal request by a government for price quotations from the private sector. The RFQ must clearly delineate the items or services the government is seeking, and must state that it is merely an informational request, in that no contract will result from the response of a private firm.

SERVICE CONTRACT

A contract between a government and a private firm under which the firm is, through the use of its personnel, providing the government with services, rather than physical products or goods. Service contracts share many common elements and themes with works (construction) contracts.

Service contracts can be management contracts, operation and maintenance contracts, professional support contracts, or variations on these.

SOCIOECONOMIC PROGRAMS

Programs of a government which are outside the scope of the privatization contract or sale in the narrowest sense (in that they don't deal with the operation of the program itself), but which are of great importance to the government for fundamental reasons.

These concerns are thus addressed through the insertion of clauses in contracts or sale agreements, requiring certain actions regarding, e.g., non-discrimination, local hiring, or environmental protection.

| | |
|-------------------------------|---|
| SOLICITATION | A general term which includes all actions by a government in which it invites the private sector to participate in a contract action through the submittal of bids (IFB) or proposals (RFP). |
| SOURCE EVALUATION BOARD (SEB) | An interdisciplinary group assembled from within a government to evaluate the bids or proposals, and also to look at the background and abilities of the offerors, during complex contracting actions. |
| SOURCE SELECTION BOARD (SSB) | A higher level government group created in a contracting action to review recommendations of all groups, boards and individuals regarding the choice of a contractor, and to make a final decision on who best meets the technical, financial and program/policy needs of the program. |
| SOURCE SELECTION OFFICIAL | A high policy level official in a government who makes the final choice of contractor, basing a decisions on inputs from all relevant boards and groups. |
| SOW | Statement of Work |
| SPECIFICATIONS | The clearly stated and accurate technical elements of the product, process or service a government is seeking in a contracting action. Since the adequacy of performance under the contract will be measured by te degree of compliance with the specifications, they assume a great importance, and offerors should be given every opportunity to ensure that there are no ambiguities or erroneous interpretations by either party. |
| STATE OWNED ENTERPRISE (SOE) | A corporate entity whose stock is owned totally or in a majority by the government, or an entity that is run as a corporation, but which is a creation and unit of this government, with no shares being available for private ownership (hence the need to privatize). (Also known as "parastatal.") |
| STATEMENT OF WORK | The portion of the contract in which the required actions, services, products or other performance deliverables are spelled out and agreed to. |

TERMINATION

The ending of a contract by either a government or the private contractor. Unless the contract provides otherwise, it can be assumed that the government has the inherent right to terminate for its own convenience, or because of the default of the contractor; the contractor, on the other hand, has much less power to get out of a contract.

In any case, however, there will usually be financial payments made by the party backing out to the other party.

**TERMS AND
CONDITIONS**

The very technical and detailed provisions of the contract which spell out explicitly the rights, duties and obligations of the parties to a contract. No contract can be without terms and conditions, no matter how simple their presentation.

UNDERWRITER

An organization that assists sellers of stock (such as a government) by working closely on decisions involving markets and prices, and by agreeing (for a fee) to buy for its own account those shares which cannot be sold on the market.

APPENDIX B

ADMINISTRATIVE PROTOTYPE AND
A CHECKLIST FOR THE COMMERCIALIZATION OF
A GOVERNMENT ACTIVITY

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| TASKS | COMPONENTS | IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION |
|---|--|--|
| A. Feasibility Tasks | | |
| 1. Organize a government-business-community advisory group to plan, recommend policy and program guidelines and monitor implementation. | Includes a charter, with goals, objectives operating authority, a budget, work plan, staff support, and publicity. | <u>Important:</u> All privatization actions should take place within a program in which political, business and community leaders are jointly involved via its formulation and oversight. |
| 2. Develop criteria for selecting candidate targets for commercialization, and for evaluating each. | Involves a range of political, legal socio-economic, operational, human resources, finance, business and other weighted criteria for evaluation. | <u>Imperative:</u> Shows forethought and gives political and business stamp of approval about complex, controversial nature of a privatization evaluation. Provides consistency and uniformity. |
| 3. Evaluate and priority rank agencies/functions for in-depth commercialization review. | Use of criteria and standard methodologies by staff; conduct a macro review. | <u>Important:</u> Governmental functions not susceptible to commercial operations easily eliminated; provides priority ordering; all transactions have passed through same screening process. |
| 4. Designate an independent group to conduct each commercialization review. | Establishes a unique and independent review group and/or consultant team, with explicit authority, budget, work and a competent staff to conduct in-depth review of each target. | <u>Important:</u> Political, business, and community leadership must have confidence in the competence and objectivity of review group. |
| 5. Conduct an agency or function-specific commercialization review using criteria approved in Task 2. | Review group conducts a multi-disciplinary analysis (with documentation) of a particular target approved criteria and standard methodologies. | <u>Imperative:</u> Without a formal, targeted analysis using approved guidelines, and accepted methodologies, it is difficult to determine and demonstrate whether commercialization is justified and will work. |

56

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| TASKS | COMPONENTS | IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION |
|--|--|---|
| 6. Prepare and present findings and recommendations to high-level government official. | Includes background report and a presentation of findings and recommendations, including an implementation plan. | <u>Important:</u> Detailed analysis should result in findings and recommendations for use at different stages in government decision-making. This is the full and accurate statement of the situation. |
| 7. Decision to proceed with commercialization of a government activity. | Requires a written decision from the selection official explaining reasons for and plan to proceed with the commercialization transaction. | <u>Imperative:</u> A formal, written decision is essential to: provide evidence of continued political commitment; ensure allocation of resources for remaining tasks; and to build business and public confidence in the process. |
| B. <u>Commercialization Transfer Tasks</u> | | |
| 1. Prepare plans for the commercialization transaction. | Includes statement of objectives, work requirements, assignment of key personnel, schedule and budget. | <u>Important:</u> provides a needed roadmap for all of the participants in the commercialization process. |
| 2. Evaluate personnel impacts and develop alternative approaches to minimize dislocations. | Provides vital statistics of personnel; describes impact scenarios; and examines ways to reduce negative impacts on personnel. | <u>Imperative:</u> government employees should be informed after decision as to what steps the government will take to protect their interests. |
| 3. Counsel all employees likely to be affected by transaction. | Requires that each employee is counseled in person by a competent personnel employee about employment and benefit rights and the steps being taken to reduce adverse impacts on personnel. | <u>Imperative:</u> essential that senior management counsel personnel on both a group and personal basis, with a written description of employment and benefit options should a commercialization decision alter the employment relationship. |

57

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| <u>TASKS</u> | <u>COMPONENTS</u> | <u>IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION</u> |
|---|---|---|
| 4. Prepare operational prospectus and background report of commercialization decision. | Contains all relevant operational, resources and other background data about the organization or function being considered for commercialization. | <u>Useful</u> : provides background data for use in a commercialization solicitation. Gives all interested parties access to a uniform and comprehensive profile of the organization/function to be commercialized. |
| 5. Prepare internal work statement. | Detailed statement of steps and processes undergone by the government personnel managing the commercialization transaction. | <u>Useful</u> : Assures compliance with rules and procedures, leading to a more efficient transaction. |
| 6. Announce the commercialization action. | Involves press releases, customized information packets, and briefings for Chamber of Commerce and other business groups. | <u>Useful</u> : Creates interest and encourages businesses to learn more about doing business with government. |
| 7. Prepare programmatic work statement. | Includes work and performance standards, productivity expectations and other requirements the government will include in a commercial solicitation. | <u>Imperative</u> : A clear, concise work and performance statement, quantified to the extent practicable, is critical to the preparation of responsive proposals and future contract development and administration. |
| 8. Prepare and issue a solicitation for bids (IFB) or proposals (RFP) relating to a contract, lease or sale.* | Contains such provisions as solicitation instructions and conditions; source evaluation criteria and selection process; scope of work; key personnel provisions; pricing data; and so on. | <u>Imperative</u> : A comprehensive, well written solicitation is essential to ensure competitive, responsive offers, which should be a paramount objective of a commercialization transaction. |

* This means sale of a government facility, not stock flotations.

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| TASKS | COMPONENTS | IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION |
|---|--|---|
| 9. Conduct pre-bid orientation for interested offerors. | Involves a 2-3 hour government meeting with all interested offerors to explain program and factual background, and key provisions of the solicitation, and to respond to questions from bidders. | <u>Useful:</u> For more complex solicitations, a helpful technique to clarify at one time all the key provisions of the solicitation, identify and resolve potential problems with the terms and language, and evaluate and stimulate interest in the commercialization venture. |
| 10. Collect and evaluate proposals (RFP situation). | Includes a process for a timely and impartial review of all proposals, in accordance with the explicit evaluation criteria and ratings contained in the solicitation, to determine which offers are acceptable and unacceptable. | <u>Imperative:</u> The integrity of a final decision is keyed to an impartial and systematic written evaluation with numerical ratings by the source evaluation panel. Objective is to cluster offers within a competition or non-competitive range. The more competition, the stronger the Government's bargaining position. |
| 10A. Open Bids (IFB situation). | Public, recorded bid opening session. | <u>Imperative:</u> Public scrutiny is required to ensure low bid success. |
| 11. Conduct Best and Final review (RFP situation). | Provides an opportunity for the government to discuss proposals with individual offerors and to allow the acceptable offerors to improve upon technical responses and price proposals in a best and final offer. | <u>Important:</u> Whenever possible, the Government should bring at least two offerors into best and final negotiations since this enhances Government ability to get best offer. |
| 12. Conduct review of offeror for ability and responsibility. | Background check of experience ability (financial and technical) and references. | <u>Important:</u> Needed to ensure the ability of the offeror to perform. |

59

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| TASKS | COMPONENTS | IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION |
|--|---|--|
| 13. Announce decision to negotiate for a commercialization contract (if RFP situation). | Source selection official sends letter to best qualified offeror and losing offerors and makes public announcement. | <u>Important:</u> All offerors should be notified in writing of decision. Government should be prepared to debrief unsuccessful offerors. |
| 13A. Announce winner (IFB situation). | Source selection official sends letter to successful bidder and losing bidders, and makes public announcement. | <u>Imperative:</u> All bidders should be notified in writing of decision. |
| 14. Negotiate and execute contract (RFP situation). | Develop a proposed contract, select a negotiation team and a strategy to ensure a workable and fair agreement for the Government. Prepare memorandum setting basis of award. Upon execution, issue a written notice of award. | <u>Imperative:</u> Final, clear agreement on terms and conditions and other aspects arrived at here. |
| 14A. Execute contract (IFB situation). | Contract is signed. | <u>Imperative:</u> Final, clear agreement on terms and conditions and other aspects arrived at here. |
| 15. Implement plans for personnel, budget, finance, operational and other transitional requirements. | Sets in motion actions to transfer personnel from public payroll, adjust the budgetary and financial support, inventory property and equipment involved in transaction, etc. | <u>Imperative:</u> A commercialization transaction involving transfer of government personnel and property to a private operation <u>must</u> include an action plan for how, when and where transition is to be conducted |
| 16. Complete transition and commence the commercial operation. | Complete all actions agreed to in contract such as transfer resources and equipment to permit a commercial operator to manage under the terms of the agreement. | <u>Imperative:</u> A fixed date must be mutually set and followed to meet tax, insurance, and other legal requirements and to otherwise ensure the orderly transfer from public to private management. |

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| <u>TASKS</u> | <u>COMPONENTS</u> | <u>IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION</u> |
|---|---|---|
| <u>Follow-on Tasks</u> | | |
| Designate an agency to monitor performance. | Includes assignment of qualified personnel, with explicit functions, authority, and resources to monitor a commercialization agreement. | <u>Imperative</u> : Under a contract or lease agreement for management of a government activity, contract administration is the way to monitor and ensure compliance with the terms of agreement. |
| Develop and implement monitoring and reporting requirement. | Involves reports to government at specified intervals on: dollars expended; amount of work produced or service delivered. | <u>Imperative</u> : Government must plan for and operate a system in which agreed-upon performance milestones are tracked to determine if contractor is in compliance with commercialization agreement. This should include processing public complaints. |
| Manage acceptable and unacceptable performance. | Provides ways to acknowledge acceptable performance, including incentive awards for outstanding work, and to resolve and penalize unacceptable work, including termination of contract. | <u>Important</u> : The private management of a government activity often involves a public service obligation which requires careful contract monitoring and enforcement to protect the public interest. |
| Resolution of disputes. | Requires general dispute resolution rules or rules developed for a specific dispute, including fact findings, outside mediation, etc. | <u>Important</u> : Commercialization agreement should include provisions for minimizing and resolving disputes because it is a rare contract that does not include disputed issue. |

THE HAY GROUP

ADMINISTRATIVE PROTOTYPE AND A CHECKLIST FOR THE COMMERCIALIZATION OF A GOVERNMENT ACTIVITY

| <u>TASKS</u> | <u>COMPONENTS</u> | <u>IMPORTANCE TO INTEGRITY OF COMMERCIALIZATION TRANSACTION</u> |
|------------------------------|--|--|
| 5. Termination and closeout. | Involves contract provisions for terminating agreement for a breach, for the convenience of the government, or for for closeout at the end of the contract period. | <u>Imperative:</u> Essential that a commercialization agreement contain all of the terms and provisions for a termination and closeout of the agreement. |
| 6. Recompetition. | Stipulates the rationale for requiring periodic recompetition of commercialization agreement. | <u>Imperative:</u> A viable commercialization program is built on open and fair competition <u>at all times</u> as an incentive to both government and business in deciding which sector can provide the public with a product/service in most economic and efficient way. |

W

APPENDIX C

ANALYSIS OF EMPLOYEE OPTIONS
UNDER PRIVATIZATION

**THE HAY GROUP
ANALYSIS OF EMPLOYEE OPTIONS UNDER PRIVATIZATION**

| L EMPLOYMENT SAFEGUARDS | PROS | CONS |
|---|---|--|
| A. GOVERNMENT EMPLOYMENT SAFEGUARDS 1. EMPLOYEE GUARANTEED CONTINUED GOVERNMENT EMPLOYMENT, WITH NO LOSS OF RANK OR COMPENSATION | <ul style="list-style-type: none"> • MINIMIZES EMPLOYEE RESISTANCE TO PRIVATIZATION • ENSURES INTEGRITY OF GOVERNMENT'S EMPLOYMENT SYSTEM. • MINIMIZES BREACH OF EMPLOYMENT CONTRACT EXPOSURE. • GIVES COMPANY FREE HAND TO IGNORE OR MAKE EMPLOYMENT OFFERS TO EMPLOYEES | <ul style="list-style-type: none"> • DOES NOT REDUCE/CONTAIN GOVERNMENT EMPLOYMENT AND COSTS. • PROBLEMS OF EMPLOYEE PLACEMENT, PERFORMANCE, AND MORALE • MAY UNDERMINE ABILITY OF COMPANY TO RETAIN/OBTAIN QUALIFIED LOCAL WORK FORCE |
| 2. EMPLOYEE JOB RETRAINING WITH GUARANTEED GOVERNMENT EMPLOYMENT, BUT NO RANK OR COMPENSATION PROTECTION | <ul style="list-style-type: none"> • MAINTAINS EMPLOYMENT RIGHTS WITHOUT UNDERMINING SOUND PERSONNEL MANAGEMENT PRACTICES. • REDUCES EMPLOYEE RESISTANCE TO PRIVATIZATION | <ul style="list-style-type: none"> • IMPOSES NEW COSTS AND ISSUES OF CAPACITY TO MEET TRAINING NEEDS • ONLY SLIGHTLY REDUCES/CONTAINS GOVERNMENT EMPLOYMENT AND COSTS • PROBLEMS OF EMPLOYEE PLACEMENT, PERFORMANCE AND MORALE. • MAY UNDERMINE ABILITY OF COMPANY TO RETAIN/OBTAIN QUALIFIED LOCAL WORKFORCE |
| 3. PREFERENTIAL GOVERNMENT REEMPLOYMENT RIGHTS WHEN QUALIFIED FOR AVAILABLE JOB | <ul style="list-style-type: none"> • IMPLICIT RECOGNITION OF GOVERNMENT COMMITMENT TO ASSIST IN REEMPLOYMENT. • REDUCES/CONTAINS GOVERNMENT EMPLOYMENT AND COSTS. • ENCOURAGES EMPLOYEES TO SEEK EMPLOYMENT WITH PRIVATIZATION ENTITY. | <ul style="list-style-type: none"> • LESSENS EMPLOYEE SUPPORT FOR PRIVATIZATION • MAY DESTABILIZE GOVERNMENT EMPLOYMENT SYSTEM |
| 4. NO REEMPLOYMENT SAFEGUARDS. | <ul style="list-style-type: none"> • INCREASES POTENTIAL FOR GOVERNMENT COST REDUCTIONS • MAXIMIZES SHRINKAGE OF GOVERNMENT. • GREATER ADMINISTRATIVE EASE IN PROCESS. | <ul style="list-style-type: none"> • MAXIMIZES EMPLOYEE RESISTANCE TO PRIVATIZATION • MAY DESTABILIZE GOVERNMENT EMPLOYMENT SYSTEM • REDUCES ABILITY TO ATTRACT QUALIFIED PEOPLE FOR ESSENTIAL GOVERNMENT SERVICES. |
| B. GOVERNMENT ASSISTANCE FOR EMPLOYEE PRIVATIZATION INITIATIVE 1. EMPLOYEE ACQUISITION PLAN (i) Direct Equity Purchase (ii) Employee Stock Ownership Plan | <ul style="list-style-type: none"> • PROVIDES EMPLOYEES AN OPPORTUNITY TO BECOME EQUITY HOLDERS WITH NEW INCENTIVES TO INCREASE PRODUCTIVITY. • PRIVATIZATION ENTITY ABLE TO MAINTAIN SKILL AND KNOWLEDGE BASE. • EXPANDS PRIVATE-SECTOR AND CAPITAL INVESTMENT BASE OF A COMMUNITY. • PROVIDES A POWERFUL TOOL TO REDUCE EMPLOYEE AND PUBLIC OPPOSITION TO PRIVATIZATION. • ENSURES HIGH DEGREE OF LOCAL CONTROL. | <ul style="list-style-type: none"> • EXTRA ADMINISTRATIVE COSTS IN THE PRIVATIZATION ACTION • IF NO NEW MANAGEMENT INCLUDED IN ESOP, OPERATIONAL INEFFICIENCIES AND OTHER PROBLEMS THAT CAUSED GOVERNMENT TO PRIVATIZE MAY BE PERPETUATED • NO AUTOMATIC RELATIONSHIP BETWEEN EMPLOYEE OWNERSHIP AND INCREASED PRODUCTIVITY. • IF ESOP REPLACES PENSION PLAN, BUSINESS FAILURE WOULD LEAVE EMPLOYEES WITH NO RETIREMENT COVERAGE |
| 2. EMPLOYEE TAKEOVER UNDER PRIVATIZATION SET-ASIDE. | <ul style="list-style-type: none"> • GOVERNMENT CAPITAL INFUSION INCREASES LIKELIHOOD OF SUCCESS. | <ul style="list-style-type: none"> • GOVERNMENT INTERFERENCE WITH COMPETITIVE MARKET FORCES • TIME CONSUMING AND COSTLY PROCESS |
| 3. EMPLOYEE PRIVATIZATION TAKEOVER AFTER FIXED-TERM EXPATRIATE CONTRACT. | <ul style="list-style-type: none"> • MAKES IMMEDIATE PRIVATIZATION WITH EXPERIENCED EXPATRIATE FIRM MORE PALATABLE. • INCREASES PROSPECTS THAT LOCAL EMPLOYEE TAKEOVER WILL SUCCEED. | <ul style="list-style-type: none"> • BECAUSE OF INVESTMENT AND RISKS • DIFFICULT TO FIND QUALIFIED FIRMS THAT WILL AGREE TO A PERIOD OF LESS THAN 5 TO 10 YEARS. • DIFFICULTY IN ESTABLISHING AN ENFORCEABLE AGREEMENT AND PROVIDING FOR STAGED TRANSITION |
| 4. NO ASSISTANCE | <ul style="list-style-type: none"> • ALLOWS COMPETITIVE MARKET SYSTEM TO OPERATE WITHOUT GOVERNMENT INVOLVEMENT AND PREFERRED TREATMENT FOR GOVERNMENT EMPLOYEES. • EQUAL TREATMENT OF ALL GOVERNMENT EMPLOYEES. | <ul style="list-style-type: none"> • REDUCES OPPORTUNITY TO GAIN SUPPORT OF A CONSTITUENCY (GOVERNMENT EMPLOYEES) NEEDED FOR MEANINGFUL PRIVATIZATION |

45

**THE HAY GROUP
ANALYSIS OF EMPLOYEE OPTIONS UNDER PRIVATIZATION**

| I. EMPLOYMENT SAFEGUARDS | PROS | CONS |
|---|---|--|
| C. GOVERNMENT-IMPOSED SAFEGUARDS UNDER PRIVATIZATION AGREEMENT 1. EVERY EMPLOYEE GRANTED FIRST RIGHT OF REFUSAL | <ul style="list-style-type: none"> • FORCES GOVERNMENT AND COMPANY TO WORK CLOSELY AND FAIRLY WITH EMPLOYEES TO ASSESS THEIR CAPABILITIES, INTEREST, AND POTENTIAL, AND TO ENSURE MEANINGFUL JOB PLACEMENT. • REQUIRES GOVERNMENT AND COMPANY TO IDENTIFY UNQUALIFIED WORKERS AND MUTUALLY AGREE UPON RETRAINING OR OTHER SOLUTION. • INCREASED EMPLOYEE SAFEGUARDS REDUCES RESISTANCE TO PRIVATIZATION. | <ul style="list-style-type: none"> • MAY IMPOSE UNACCEPTABLE BURDEN AND DISCOURAGE PRIVATE INVESTMENT AND RESPONSE TO PRIVATIZATION AGREEMENT. • INCREASED COSTS MAY REDUCE COST-SAVING OPPORTUNITIES FOR BOTH GOVERNMENT AND COMPANY. |
| 2. PERCENTAGE OF EMPLOYEES HAVE FIRST RIGHT OF REFUSAL. | <ul style="list-style-type: none"> • REEMPLOYMENT DISCRETION WILL INDUCE PRIVATIZATION INVESTMENT AND RESPONSE. • FORCES GOVERNMENT AND COMPANY TO JOINTLY IDENTIFY AND ENCOURAGE QUALIFIED WORKERS TO TRANSFER TO PRIVATE EMPLOYMENT. • REQUIRES GOVERNMENT TO RESPOND TO PROBLEMS OF UNQUALIFIED WORKERS. | <ul style="list-style-type: none"> • INCREASES GOVERNMENT'S BURDEN AND COST TO HELP UNQUALIFIED WORKERS. • MAY IMPOSE AN UNACCEPTABLE PERCENTAGE OF UNQUALIFIED WORKERS ON COMPANY AND UNDERMINES PRIVATIZATION OPPORTUNITY. • INCREASES COSTS. MAY REDUCE COST-SAVING OPPORTUNITIES FOR BOTH GOVERNMENT AND COMPANY. |
| 3. PERCENTAGE OF WORKFORCE MUST BE LOCAL. | <ul style="list-style-type: none"> • AN IMPORTANT INDICATOR THAT GOVERNMENT HAS CREATED CONTRACTUAL OR LEGALLY ENFORCEABLE SAFEGUARDS THAT A COMPANY MUST ABIDE BY LOCAL EMPLOYMENT, ECONOMIC AND SOCIAL PREFERENCES. • HELPS UPGRADE LOCAL MANAGERIAL AND WORKFORCE CAPABILITIES, PARTICULARLY IN PRIVATIZATION AREAS THAT CANNOT BE MET BY EXISTING LOCAL BUSINESSES. | <ul style="list-style-type: none"> • IF PERCENTAGE IS TOO HIGH AND/OR LABOR MARKET CANNOT PROVIDE REQUIRED SKILLS, MAY IMPOSE UNACCEPTABLE COSTS AND OPERATING BURDEN ON COMPANY. |
| 4. NO REQUIREMENTS | <ul style="list-style-type: none"> • INDICATES GOVERNMENT COMMITMENT TO ALLOW COMPANY TO MANAGE WITHOUT GOVERNMENT INTERFERENCE, WHICH MAY INDUCE GREATER BUSINESS INTEREST IN PRIVATIZATION. | <ul style="list-style-type: none"> • FUELS ANTI-PRIVATIZATION ARGUMENT THAT GOVERNMENT PROGRAM IS INSENSITIVE TO LOCAL EMPLOYMENT, ECONOMIC AND SOCIAL CONTROLS AND PREFERENCES. |
| II. EMPLOYEE BENEFITS PROTECTION | PROS | CONS |
| 1. GOVERNMENT GUARANTEES FULL/PARTIAL RETIREMENT BENEFITS FOR DISLOCATED EMPLOYEES. | <ul style="list-style-type: none"> • MINIMIZES EMPLOYEE RESISTANCE TO PRIVATIZATION. • MINIMIZES BREACH OF CONTRACT EXPOSURE | <ul style="list-style-type: none"> • COULD SUBSTANTIALLY INCREASE GOVERNMENT'S LIABILITY AND REDUCE COST SAVINGS OPPORTUNITIES. • MAY BE ACTUARIALLY INDEFENSIBLE AND UNDERMINE INTEGRITY OF RETIREMENT PROGRAM. |
| 2. GOVERNMENT PROVIDES EARLY RETIREMENT. | <ul style="list-style-type: none"> • MINIMIZES RESISTANCE OF THOSE WHO BENEFIT. • PROTECTS VESTED INTERESTS OF EMPLOYEES WHO ARE CLOSE TO RETIREMENT. • REDUCES GOVERNMENT PAYROLL. | <ul style="list-style-type: none"> • COULD SUBSTANTIALLY INCREASE GOVERNMENT'S LIABILITY AND REDUCE COST SAVINGS OPPORTUNITIES. • MAY BE ACTUARIALLY INDEFENSIBLE AND UNDERMINE INTEGRITY OF RETIREMENT PROGRAM. |
| 3. GOVERNMENT PROVIDES FIXED-TERM SUBSIDY FOR ALL/PART OF EMPLOYEE BENEFITS. | <ul style="list-style-type: none"> • ALLOWS EMPLOYEES TIME TO TRANSITION INTO A DIFFERENT BENEFITS SYSTEM. | <ul style="list-style-type: none"> • ADDED GOVERNMENT COSTS. |
| 4. SEVERANCE PAY | <ul style="list-style-type: none"> • PROVIDES INCOME FOR DISPLACED EMPLOYEES WHOSE REEMPLOYMENT HAS BEEN DELAYED BY TRANSITION PROBLEMS. | <ul style="list-style-type: none"> • ADDED GOVERNMENT COSTS. • NO GOVERNMENT OBLIGATION, IF EMPLOYEE HAS NO BREAK IN EMPLOYMENT. |
| 5. BUY-OUT | <ul style="list-style-type: none"> • FINAL, BINDING WAIVER OF CLAIMS BY EMPLOYEE. | <ul style="list-style-type: none"> • ADDED GOVERNMENT COSTS. |
| 6. COUNSELING, TRAINING AND OUTPLACEMENT SERVICES | <ul style="list-style-type: none"> • FULFILLMENT OF EMPLOYMENT CONTRACT. | <ul style="list-style-type: none"> • ADDED GOVERNMENT COSTS. |
| 7. NO SPECIAL PROTECTION. | <ul style="list-style-type: none"> • ELIMINATES FUTURE BENEFITS AND COSTS TO GOVERNMENT. | <ul style="list-style-type: none"> • UNFAIR TO CAREER EMPLOYEE WITH SUBSTANTIAL LONGEVITY. • INCREASES RISK OF LAWSUITS. |

57