



Office of Command Counsel Newsletter

December 1998, Volume 98-6

Office of Command Counsel to Hold A-76 Workshop

As profiled in these pages periodically in the last several Newsletters, the issues of competitive sourcing, privatization, contracting out and the A-76 process is of paramount importance to AMC.

AMC attorneys will increasingly be asked to provide legal advice and counsel on the many procurement, personnel, ethics and environmental issues that encompass this discipline. Additionally, we will be a part of the interdisciplinary teams participating in the important planning, consideration, decisionmaking and implementation of the process.

Dates: December 15-17, 1999

To meet this challenge AMC Command Counsel **Edward J. Korte** has asked **Bill Medsger**, Chief, Business Operations Law Division at the HQ, AMC to plan the pro-

gram. The Workshop will be held 15-17 December 1998. Additionally, CECOM Chief Counsel **Kathi Szymanski** volunteered to host the Workshop, and it will be held in the Molly Pitcher Hotel, Red Bank, New Jersey.

AMC has several very important competitive sourcing projects that are currently under various stages of the administrative process. AMC attorneys are integral members of the teams that are participating in the stages of those efforts. We know there will be more proposals in the near future.

An exciting agenda is planned. AMC counsel involved in current competitive sourcing issues and projects will provide critical information to those attendees and Chief Counsel who will soon be engaged in several efforts.

A complete report on the A-76 Workshop will be the theme of Newsletter 99-1.

AMC Legal Office Profiles

A new feature of our bi-monthly Newsletter is a Legal Office Profile. We sincerely thank **John Stone** of the Soldier System Center, Natick, Mass. who was the first to respond to the request.

We hope to profile a different AMC Legal Office in each subsequent edition of the Newsletter.

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Business Cards Can Be An Necessary Expense for Some Federal Employees--Like Who?

The General Accounting Office has changed its approach to the question of using appropriated funds to support the purchase of business cards for government employees.

In response to a request to purchase business cards for employees of the Civilian Personnel Advisory Center, the GAO uses its "necessary expense" perspective. It concludes that it is permissible to use appropriated funds if the employees for whom the business cards are pur-

chased "regularly deal with the public or organizations outside their immediate office."

In GAO Opinion B-280759, the Comptroller General cited a recent opinion by the Justice Department's Office of Legal Counsel (OLC) supporting such expenditures for "mission-related use" by the General Services Administration. OLC used the GAO "necessary expense" analysis. ©

Streamlining Acquisitions through Proper Documentation

HQ AMC's Protest Counsel **Jeff Kessler**, DSN 767-8045, provides a point paper reminding acquisition folks that most bid protest litigation involves, in one way or another, a failure to properly document an acquisition file.

The general GAO standard is set forth in Comdisco, Inc. B-277340, Oct. 1, 1997: "...procuring agencies have a fundamental obligation to ad-

equately document their source selection decisions so that a reviewing forum can determine whether those actions were proper."

Although the FAR often calls for decisions without requiring supporting documentation, reducing to writing is an excellent practice that proves invaluable if litigation occurs (Encl 1). ©

Newsletter Details

Staff

Command Counsel
Edward J. Korte

Editor

Stephen A. Klatsky

Layout & Design

Holly Saunders

Administrative Assistant

Fran Gudely

Typist

Billy Mayhew

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Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

Acquisition Law Focus

Protests By Government Agencies

SBCOM's **Phil Hunter**, DSN 584-1299, provides an excellent paper on a recent case in which his organization filed a protest against another Federal agency. The paper contains a factual backdrop to the case. It also contains an analysis of USC Code, Executive Order and FAR provisions related to who is an "interested party" within the context of filing a protest.

Protests are recommended only as a last resort and only when blatant statutory and regulatory violations exist. Governmental agencies must aggressively review CBD announcements to determine if it can satisfy other agencies' acquisition requirements. If you can satisfy an announced re-

quirement, but are prevented from submitting a proposal because of various advertised restrictions, e.g., sole sourceness (only one responsible source), challenge the restrictions and if necessary protest the solicitation prior to the date specified for proposal submission. NOTE: Don't protest unless you are categorically sure that your agency can satisfy all solicitation requirements. Otherwise, we are no better than protesters who submit frivolous, ridiculous and time-consuming protest. Your agency must clearly and unequivocally show a direct economic interest and impact in not receiving the award or not being permitted to submit a proposal (Encl 2). ©

CBD Internet WebSite & Publication Date

AMC Protest Team Leader **Vera Meza**, DSN 767-8177, provided ESC attendees with a point paper highlighting a Court of Claims decision holding that the hard copy publication date, not the elec-

tronic version governs the application of regulatory time provisions. See FMNI v. US, No. 98-447C, June 30, 1998, which cites 41 USC 416 as authority for the ruling (Encl 3). ©

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Acquisition Law Focus

Competitive Sourcing and Privatization Legislation: Appropriation and Authorization Acts

HQ AMC acquisition policy counsel **Diane Travers**, DSN 767-7571, provided MSC ESC attendees with an excellent update regarding changes to the DOD competitive sourcing and privatization legislation contained in both the FY 99 DOD Authorization and Appropriations Act. The President signed both laws on 17 October 1998 (Encl 4).

Authorization Act

Several sections are analyzed. For example Sec. 342 amends the reporting and analysis requirements before changing a commercial and industrial type function from performance by DOD civilians to performance by the private sector at 10 U.S.C. 2461. Section 2461 was reorganized with three significant changes.

First, paragraph (a) was changed to read, "A commercial or industrial type function of the Department of Defense that, as of October 1, 1980, was being performed

by Department of Defense civilian employees may not be changed to the performance by the private sector until the Secretary of Defense full complies with the reporting and analysis requirements [of the statute.]"

Second, a requirement was added for the Secretary of Defense to submit a report about a proposed study to Congress prior to its commencement, which must include a certification that the proposed performance of the commercial or industrial type function by the private sector is not the result of a decision by an official of a military department to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

A union or other employee representative then has the right to challenge the failure to submit either the report or the certification within 90 days. If the Secretary of Defense determines

the proper documentation was not submitted, the issuance of a solicitation or award of a contract must be delayed until the required documentation is submitted.

Third, the amendment increases the threshold for a waiver from the statutory reporting and analysis requirements from studies with 20 or fewer employees to studies with 50 or fewer employees (but see sec. 8014 of the Appropriations Act).

Appropriations Act

Among the significant provisions in the Appropriations Act is one that requires the Secretary of Defense to submit a report to Congress by 31 March 1999 providing a detailed assessment of the results of DOD's privatization strategy to date. The report must specify those functions or activities selected for outsourcing, the criteria used to select these functions, and the net savings achieved by outsourcing in FY 1996-1998. ©

Acquisition Law Focus

Putting the Value in Best Value

HQ AMC Protest Litigation counsel Craig Hodge, DSN 767-8940, reports on the recent GAO case Electronics Design, B-279-662.2, August 31, 1998, in which the bidder challenged the acquisition plan as it pertains to price.

In sustaining the protest, GAO stated that the Navy's evaluation and source selection decision did not give significant consideration of price, and therefore, was inconsistent with the Competition in Contracting Act.

Cost or price has not been accorded significant consideration if the agency's evaluation and source selection decision so minimizes the potential impact of cost or price as to make it a nominal evaluation factor. Here, the agency states that price was considered only to determine whether a proposal was eligible for award. To the extent the agency did consider price in this procurement, it was solely to determine basic eligibility for award. Such a consideration of price is nominal; indeed anything less would be to ignore price completely (Encl 5). ©

Central Contractor Registration

IOC Counsel **CPT Marc A. Howze**, DSN 793-8111, has written a paper on the Central Contractor Registration (CCR) (Encl 6). CCR is a database of contractor information that enables contractors to receive payment by Electronic Fund Transfer (EFT) and increases contractor visibility to potential government buyers. By collecting information from each contractor, the CCR provides a central database that records, validates and distributes specific data about contractors to government buyers. While the CCR process will soon be the standard government wide, the Department of Defense (DOD) is the first agency to implement the CCR process across all buying and paying activities.

The DOD developed the CCR to support the President's Executive Memorandum entitled "Streamlining Procurement through Electronic Commerce", dated October 13, 1994 and to comply with the Debt Collection Improvement Act of 1996 which requires contractors

doing business with government to furnish its taxpayer identification number and EFT information.

In the DOD, CCR is not an option. Defense Federal Acquisition Regulation Supplement (DFARS) Subparts 204.73, 212.5, 232.11, 252.204, and 252.232 now require contractor registration in the CCR prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from a solicitation issued after May 31, 1998.

As a general rule, contracting officers are prohibited from awarding to a contractor that is not registered. Prior to making an award, the contracting officer must verify that the contractor is registered in the CCR database. The offeror is required to provide its Data Universal Numbering System (DUNS) or DUNS+4 number, which the contracting officer will use to verify registration.

Information on CCR may be obtained at www.ccr.edi.disa.mil or 1-888-227-2423. The web site also provides assistance with completing the registration. ©

ADR Comes to the FAR: Highlights of Coverage in Parts 6, 24, 33

The Federal Acquisition Regulations (FAR) was amended effective December 29, 1998, to provide greater coverage/clarity in the area of Alternative Dispute Resolution (ADR) policy guidance. Highlights of changes in FAR Parts 6, 24, and 33 include the following:

- o If this otherwise voluntary method for dispute resolution is requested by the Government or a Contractor, specific reasons must be provided if it is rejected by either.
- o The rule permits a contract with a neutral person as

an exception to requirements for full and open competition.

- o ADR means “any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.”

- o Revises requirements for certification of a claim under the Administrative Dispute Resolution Act to

conform to the requirements under the Contract Disputes Act.

- o Specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

- o Unless required by law, arbitration cannot be required as a condition of contract award. However “an agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.”

Single Award IDIQ Task Order Contracting Successfully Challenged in COFC

HQ AMC acquisition counsel **Lisa Simon**, DSN 767-2552, highlights a recent Court of Federal Claims case on IDIQ task order contracts, WinStar Communications, Inc. v. US, 98-480C, Sept. 9, 1998.

In that case, WinStar objected to GSA’s use of a single award IDIQ task order contract for telephone services, contending that it violated the statutory preference for mul-

iple award IDIQ task order contracts. The court agreed and found that the KO’s single award determination was arbitrary and capricious. The bottom line from the case is that KO’s should provide a detailed analysis in their single award determination (FAR 16.504(c)(1)), which analysis should expressly consider the benefits of multiple awards. In WinStar, the KO did not do this, prompting the court to conclude that

... it is impossible to conclude that a single award will provide more favorable terms and conditions . . . without first considering the terms and conditions which could result from multiple awards. Likewise, the conclusion that the cost of administering multiple contracts may outweigh the potential benefits . . . plainly cannot be made without considering the potential benefits of multiple awards. Finally, the [KO] cannot rationally conclude that a single award is more beneficial to the Government than multiple awards . . . without considering the benefits of multiple awards.

Employment Law Focus

78% Success Rate: ADR for Workplace Disputes--It Really Works!

"One-Person" RIF Does Not Work--Even for Attorney Positions

DA announced the results of its recent survey of ADR programs for workplace disputes in Labor Relations Bulletin #406, November 4, 1998. The results of the survey show approximately 78% of the cases submitted under the activities' ADR programs were successfully resolved without going to formal case processing. One of the more obvious results of the survey was that ADR is not being sufficiently used at installations and activities within the Army.

Other activity comments concerning their local ADR programs include:

O The vast majority of employees using ADR do so to get their problems resolved.

O Cases more appropriate for ADR include performance appraisals, communication problems, written reprimands and harassment/-hostile work environment, though most problems can be resolved under an ADR process.

O A workplace dispute is readily resolved in mediation if: (a) the parties know that mediation is available and what it is; and (b) are willing to honestly attempt resolution.

O Situations in which large financial compensation/damages are sought are harder to resolve in ADR. The same is true where employees are "seeking revenge."

O Few individuals use ADR as a discovery tool.

O Approximately 1,200 cases were identified as being processed under the activities' various ADR programs. Approximately 78% of those cases were successfully resolved during the ADR process. That's approximately 912 cases where the local parties were able to resolve their concerns without the need (and cost) of formal third-party intervention.

The complete report will be sent to AMC labor counselors. POC is **Steve Klatsky**, DSN 767-2304. ©

In the case of Heelen v. Department of Justice, 98 FMSR 7018, August 28, 1998, the US Court of Appeals for the Federal Circuit overturned the RIF of an attorney, highlighting that an agency must provide substantial evidence that it properly conducted a RIF. Here the Court disagreed with both the MSPB Administrative Law Judge and the Board that the agency satisfied this burden. The Court found that the attorney should have been placed in the same competitive level as another attorney who had less seniority. The agency did not establish the reason for placing each GS-15 attorney in separate one-person competitive levels. ©

Employment Law Focus

FSIP: Agencies Have Burden in Flexible/Compressed Work Hour Cases

The DA recently highlighted the extent of the management burden concerning disputes over flexible and compressed work hours. Section 6130-32 of Title 5 requires activities to negotiate with their labor organizations concerning the establishment or termination of flexible or compressed work schedules. If an impasse is reached, the matter is elevated to the Impasses Panel. For management to be successful, it must prove that the schedule creates an adverse agency impact. (See 5 USC 6131.)

In Department of the Army, U.S. Army Ordnance, Missile and Munitions Center and School, Redstone Arsenal, Alabama and Local 1858, AFGE, 90 FSIP 21 (1990), the Panel held that under the Flexible and Compressed Work Schedule Act (the Act), an adverse agency impact determination must be made by the agency head.

The DA asked the FSIP whether Army Regulation

690-990-2, Book 610, Hours of Duty, Subchapter S1-1a, was sufficient to demonstrate delegation of this authority. The portion of the regulation provides, "Authority for establishing and changing the tours of duty of civilian employees is delegated to the commander of any activity employing civilian personnel. This includes the authority to approve overtime and to establish flextime schedules."

The FSIP response reminds us that each installation coming before the Panel on a flexible or compressed work schedule impasse must provide a copy of the regulation with its position. Failure to provide a copy of the regulation containing the delegation authority with your adverse agency impact arguments will likely result in the Panel directing the implementation or continuation of the flexible or compressed work schedule. ©

EEO Complaints from Contractors

The DA Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCRA) has distributed, through EEO channels, interim guidance on EEO complaints from individuals who are not federal employees (i.e., contractors) alleging discrimination or reprisal involving Army personnel with whom they interact.

EEOC's position is that a contractor and its client can be held jointly and severally liable for discrimination against an individual.

The Notice expresses EEOC's intent to allocate responsibility for front pay, back pay, compensatory, punitive, liquidated and other damages between and among liable "joint employers" in the manner that maximizes the potential relief to the complainant. Relying upon King v. Dalton, 895 F.Supp 831 (E.D. Va. 1995), EEOC Notice 915.002 asserts that this joint employer theory is applicable to federal agencies, but it does not explain how such allocation would be effected across sector lines.

The EEOC Notice acknowledges that a federal agency may be held liable for discrimination only in its capacity as a common law "employer" of the complainant. ©

Lautenberg Amendment: Firearm Disability Held Unconstitutional

HQ AMC Labor Counselor **Cassandra Johnson**, DSN 767-8050, provided ESC attendees with a point paper updating commanders on a DC Court of Appeals decision that the Lautenberg Amendment is unconstitutional (Encl 7).

The Omnibus Consolidated Appropriations Act of 1997, amended the Gun Control Act of 1968 with the inclusion of the Lautenberg Amendment (18 USC section 921, 922). It created a new firearms "disability" and made it a felony punishable by up to 10 years in jail for:

○ any person convicted in any court of a misdemeanor crime of domestic violence to ship or transport in interstate or foreign commerce or possess or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce; or

○ any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been

convicted in any court of a misdemeanor crime of domestic violence.

The United States Court of Appeals for the District of Columbia Circuit issued a decision adverse to the United States in Fraternal Order of Police (FOP) v. United States, No. 97-5304, 28 August 1998. The Court held that the Lautenberg Amendment violates the Equal Protection Clause and is therefore unconstitutional. The Court found unconstitutional the provision prohibiting the possession of firearms in an official capacity by police officers convicted of misdemeanor crimes of domestic violence, while allowing police officers with felony convictions to continue to possess firearms in their official capacities. An appeal has been filed.

DA's guidance is to coordinate with the MACOM and DAJA before initiating an adverse action against an employee who cannot perform the duties of his/her position because of the Lautenberg Amendment. ©

Federal Employment Down 343,000 in the 1990's

In the 1990's the Federal Government reduced its rolls by 343,000 with the Defense Department accounting for 281,000. The total DOD civilian employment of 693,000 is the first time since 1948 that the figure was below 700,000. At the same time, employment in the state and local governments increased by 2 million. ©

Employment ADR: An Overview

Kay Krewer, Chief, TACOM-ACALA Legal Group, DSN 793-8414, has written a paper entitled "An Overview: The Use of Alternative Dispute Resolution for Employment Related Disputes." The paper discusses the characteristics, benefits and disadvantages of ADR, describes private and public sector experiences with ADR, raises issues such as binding arbitration, of which EEOC is an outspoken critic, and concludes with a discussion of the future of ADR. All in all an excellent way for labor counselors, and others, to learn a great deal about ADR (Encl 8). ©

Greening of America through Executive Order: Waste Prevention, Recycling and Federal Acquisition

A Strategy for Environmental Justice

HQ AMC Environmental Team Leader **Bob Lingo**, DSN 767-8082, prepared a Point Paper for the ESC, alerting commanders of EO 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, which imposes additional requirements from those previously required by EO 12873, which is superseded (Encl 9).

EPA and States are directed to include an evaluation of compliance with the requirement to have an affirmative procurement program for EPA designated items made from recovered material as part of their multi-media inspections of Federal Facilities.

Contracts for support services at Government owned or

operated facilities, as well as contracts for operation of such facilities, shall require the contractor to comply with the EO requirements.

The Order continues and strengthens the requirement to purchase EPA designated items containing recovered materials and to have affirmative procurement programs for such items.

Agencies must provide written justification for not purchasing EPA designated items that meet or exceed EPA guidelines.

The DAR Environmental Committee has reported to the DAR Council recommending necessary changes in the Federal Acquisition Regulations to implement the requirements. ©

Environmental Justice issues are increasingly coming under scrutiny, since the President issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations. The Army has issued interim strategy and will be issuing final guidance and implementation strategy in 1999. A copy of the interim Army guidance, and the March 1995 DOD Strategy on Environmental Justice may be obtained by contacting **Robert Lingo** at DSN 767-8082 or blingo@hqamc.army.mil. To keep track of the latest developments and policies in this area, an excellent source is the EPA's Office of Enforcement and Compliance Assurance's Office of Environmental Justice Home Page, at <http://es.epa.gov/oeca/oelj.html>. ©

Environmental Law Focus

Report on AMC Environmental Restoration Workshop

The AMC Environmental Restoration Workshop was held on 17-19 November 1998. At the workshop, it was reported that AMC is continuing to do an excellent job executing its environmental restoration program. In particular, the total estimated environmental cleanup costs for Army were reduced from \$7.5 billion (FY 98) to \$6 billion (FY 99). In addition, the Army is initiating the following programs to further improve the environmental restoration process:

* **Independent Technical Review (ITR)** - The purpose of the ITR (formerly known as "Peer Review") is to have a team of experts take a fresh look at environmental projects and provide recommendations improve the decision making process. This program is intended to assist the installation in ensuring that the environmental restoration program is implemented in a protective and cost effective manner. The AMC installations proposed to be visited next year include APG, Badger AAP, DPG, Iowa AAP, Joliet AAP, Kansas AAP, Lake City AAP, Redstone Arsenal, and Tooele Army Depot.

* **Groundwater Pump and Treat Review** - One of the most significant challenges facing the Army environmental restoration program is reducing the long term costs associated with pump and treat operations. In FY 99, the Army Environmental Center will be visiting 6 installations to review pump and treat operations and develop alternatives to reduce the long term cost of these operations. The AMC installations proposed to be visited include Riverbank AAP, Twin Cities AAP, Milan AAP, Pueblo Chemical Depot, and Tooele Army Depot.

* **Site Closeout Guidance** - The Army environmental restoration program is reaching the point of completing cleanups at various installations. However, even after the last remedy is in place, there will still be long term environmental restoration responsibilities (e.g., long term O&M for pump and treat operations, institutional control monitoring, etc.). In the near future, the Army will be publishing a draft Site Closeout Guide to address these long-term responsibilities.

If you have any questions regarding the AMC Environmental Restoration Workshop, please contact **Stan Citron** at DSN 767-8043 or scitron@hqamc.army.mil.

Going to the Source on Historical Preservation

Need to look up the law or regulations related to historic preservation and cultural resource management. The Fort Worth District, U.S. Army Corps of Engineers has prepared a CD-ROM Legal Sourcebook, Historic Preservation and Cultural Resource Management for AMC. The District should have sent a copy to your installation or MSC Cultural Resource Manager. For more information, contact **Robert S. Lingo**, DSN 767-8082 or blingo@hqamc.army.mil.

ELD Bulletins

Environmental Law Division Bulletins for November and December 1998 are provided (Encl 10 and Encl 11) for those who have not received an electronic version or who have a general interest in Environmental Law.

Focusing on ADR: Partnering, DOJ Interagency Group and More

Partnering

DOJ ADR IAWG

Steve Klatsky, AMCCC, DSN 767-2304, prepared a point paper for the ESC highlighting the successful implementation of 18 Partnering Workshops held in conjunction with Roadshow VII. (Encl 12). The paper mentions a Roadshow VII Partnering After-Action Report, distributed during the ESC, which has been provided to AMC MSC Chief Counsels. The report highlights the success stories of these Partnering efforts, discusses barriers to expanded Partnering, and makes specific references to experiences at each of the nine Roadshow stops.

Additionally, the point paper (and after-action report) highlights significant AMC Partnering Program activities for 1999.

First, in January the AMC Partnering Team will host the AMC MSC Lead Partnering Champions in a 1 _ day Workshop to review where we are in reaching General Wilson's goal of institutionalizing Partnering as an AMC business practice.

Second, the AMC Partnering Team and MSC Lead Partnering Champions are developing an MSC Partnering "self-assessment" to determine where we are on this important initiative.

Lastly, the AMC Partnering Team is compiling an inventory of AMC Partnering arrangements conducted under the AMC Partnering Model. A report on this inventory will appear in the February 1999 Newsletter 99-1. ©

The Department of Justice has been asked by the President to lead interagency committees to facilitate and encourage agency use of Alternative Dispute Resolution. President Clinton asked the Attorney General to convene an Alternative Dispute Resolution Working Group, designated under 5 U.S.C. 573c, and subgroups to focus on the acquisition, workplace, claims and civil enforcement areas.

The DA OGC has implemented this by asking components to provide representation to four subgroups, as described above. **Steve Klatsky** represents on the Contracts and Procurement Section by **Vera Meza**, and in the Workplace Section AMC. A complete list of Army representatives is provided (Encl). The Intergency ADR Working Group (IADRWG) has established an excellent WebSite www.financenet.gov/iadrwg. The site has the official minutes of subgroup meetings and information on ADR developments.

Comments on the initial meetings of the Contracts and Procurement Section and Workplace Disputes Section are provided by Vera (Encl 14) and Steve (Encl 15).

DA DOJ ADR IAWG Representatives

We have provided a complete listing of DA representatives to the four Department of Justice ADR Interagency Working Groups. Periodically you will receive updates as to the specific ac-

tivities of these groups. (Encl 13).

AMC, USACE and TJAG are all represented reported to the DA ADR Specialist at the Office of General Counsel.

DOJ: KEY ELEMENTS TO IMPLEMENTING A SUCCESSFUL ADR PROGRAM

1. Review the Administrative Dispute Resolution Act of 1996 and the Presidential Memorandum of May 1, 1998, for legislative and executive guidance.

2. Learn as much as possible about existing federal ADR program structures to avoid unnecessary duplication of effort in creating your agency's program.

3. Visit the Working Group's ADR website at www.financenet.gov/iadrwg.htm to obtain useful ADR documents, get recent updates on federal ADR developments, and participate in newsgroup discussions with ADR experts in other federal offices.

4. Ensure that your agency makes a long-term commitment by senior leadership to the establishment of an ADR program, pursuant to the Presidential Memorandum.

5. If your agency does not yet have a policy statement on the use of ADR, encourage your agency leadership to adopt the ADR Declaration of Policy prepared by the Working Group which is provided on the Working Group's website.

6. Secure the financial resources, dedicated staff-

ing, and expertise necessary to establish and operate a federal ADR program. This includes a support structure to match agency ADR needs with appropriate agency or private-sector ADR resources.

7. If your agency has not yet done so, appoint a Dispute Resolution Specialist as required by the 1996 Act, so that there will be a clear point of contact for those wishing to use the agency's ADR program.

8. Ensure that appropriate agency personnel receive ADR education and skills training which can encompass both the theory and practice of negotiation, mediation, and related ADR techniques for both program managers and the agency counsel.

9. Review the agency's standard agreements, contracts, grants, and other documents to determine whether to amend such standard agreements to authorize and encourage the use of ADR if disputes arise.

10. Create a system to track ADR use and "lessons learned" to ensure continued progress toward the goals identified in establishing the ADR program. ©

AMC Reorganizations Effective 1 October 1998

The following list contains changes within AMC that became effective 1 Oct. 1998. Other personnel changes such as new Commanders, Chiefs of Staff etc. are continually being made to the Organizational charts and MSC/SRA listings.

USA Communications-Electronics Command, (CECOM) assumes full Command and Control of Tobyhanna Army Depot;

USA Aviation and Missile Command, (AMCOM) assumes Operational Control of Corpus Christi Army Depot and Letterkenny Army Depot;

USA Tank-automotive and Armaments Command, (TACOM) assumes Operational Control of Red River Army Depot and Anniston Army Depot;

USA Soldier and Biological Chemical Command, (SBCCOM) stands up as result of merger of USA Chemical, Biological and Defense Command, (CBDCOM), USA Solder Systems Command (SSCOM), and Surety Field Activity; and, USA Research Laboratory Command absorbs the Army Research Office. ©

Gifts, Mementos Fiscal Law & Ethics Too

AMC Fiscal Law Counsel **Lisa Simon**, DSN 767-2552, provides two papers on the issue of gifts and mementos as they relate to fiscal law matters.

GAO Case Law

First is a list of GAO cases on gifts and mementos, (Encl 16) covering such matters as mugs, pens, food vouchers as incentive awards, jackets, belt buckles, and telephones.

Second, is a paper focused on mementos. This Resource Management/Command Counsel memorandum provides guidance about purchasing mementos (Encl 17).

Mementos

By mementos, we mean things like plaques, trophies, caps, jackets, tote bags, pencils, stickers, mouse pads, coasters, magnets, jar openers, and knives that we give to employees, customers, or other people.

The basic rule is that we cannot use appropriated

funds to purchase these types of items. The General Accounting Office (GAO) has consistently told us that they do not want us to use our program funds for mementos because they consider them to be personal gifts. That said, there are several exceptions to the basic rule, addressed in the paper.

Exceptions

The rules for these exceptions vary depending on the type of funds, the recipient, and the purpose of the purchase.

Under limited circumstances, we can use appropriated funds to purchase modest promotional items. Generally, we have to show that the items are a necessary expense for the fulfillment of our mission. This means that the mementos must make a "direct contribution" to carrying out our mission. In order to meet this standard, we must be able to point to a law or regulation that allows us to purchase and distribute mementos. ©

AMC employees are in the process of completing their Confidential Financial Disclosure Reports (OGE Forms 450). "Confidential" means that these reports contain nonpublic information, are not releasable under the Freedom of Information Act, and they must be protected. Here are some helpful hints to preserve the confidentiality of the OGE Reports as much as possible:

Keep the number of people who have to handle the reports to the absolute minimum.

When not actually processing the reports, keep them out of sight.

No one, without a need to know, should ever review them.

When submitting to supervisor for review, use a PERSONAL INFORMATION cover of some sort.

When submitting to the legal office, send or bring them in a sealed envelope with some sort of restrictive marking (e.g., PERSONAL INFORMATION, TO BE OPENED BY ETHICS OFFICIALS ONLY, etc.)

Contractors in the Federal Workplace--A Fact-Filled Point Paper

HQ AMC Ethics Counsel **Mike Wentink**, DSN 767-8003, just completed an outstanding ethics training cycle highlighting the issue of Contractors in the Federal Workplace. The panel conducted training sessions at HQ AMC, for DSMC, and will soon accomplish the same for OGE in an Interagency Ethics Council session.

In addition, Mike prepared a Point Paper for the ESC highlighting several matters related to this issue (Encl18).

Remember that contractor employees are **not** Federal employees.

Identify contractor employees as such with distinctive security badges, and otherwise ensuring that our employees and members of the public understand their status.

Be aware of intellectual property rights consequences of contractor employee work products created in the Federal workplace. Generally, the contractor will be able to commercially exploit soft-

ware or inventions that it creates in the Federal workplace.

Avoid giving incumbent contractor unfair competitive advantage by including its employees in meetings to discuss aspects of the re-competition, or by accidentally allowing the contractor's employees to overhear or gain access to planning information.

Identify possible conflicts by contractor employees.

Safeguard proprietary, Privacy Act, and other sensitive and nonpublic information. Release of certain types of information to contractor employees could violate the procurement integrity law, the trade secrets act, the Privacy Act, or other laws.

Beware of gifts from contractor employees. Even if they work in the Federal workplace, they are "outside sources" and the rules for their gifts are very different than the rules for gifts between employees.

Address ethical issues promptly and confer with legal counsel. ©

Mike Wentink also provided ESC attendees with an update and reminder of the frequent flyer rules and requirements. This is always such a difficult and sensitive subject, inasmuch as common sense seems to have flown out the window—no pun intended (Encl 19).

This paper highlights the following concerns:

Frequent flyer miles earned while TDY belong to the Government. They may not be used for personal travel, donated to a charity, or given to anyone else, even if the Government cannot use them.

DOD policy is to use "official" frequent flyer miles to reduce the cost of future TDY travel. However, they also may be used to upgrade the traveler.

DOD policy is to use "official" frequent flyer miles to reduce the cost of future TDY travel.

There are some great rules concerning being involuntarily "bumped" from your flight while TDY, which are very different than those when you volunteer to be "bumped".

Ya better read the whole paper to get this one right. ©

AMC Legal Office Profile

Soldier Systems Center, Natick, Mass.

Tin Soldiers

Do you remember the story of the Steadfast Tin Soldier? A craftsman melted down a set of spoons to create a set of tin soldiers, but there wasn't quite enough to finish the set, and so the last tin soldier had only one leg. But this tin soldier stood his ground courageously, persevering against many misfortunes, even surviving a tumble off the mantle, out the window, into the storm drain. He was eventually swallowed by a large fish, which was caught and served up for dinner at the tin soldier's home, and so he returned to the mantle in triumph.

In many ways the steadfast tin soldier reminds me of the small but dedicated group of legal professionals whom I have had the privilege to lead for the last four years. It often seems that we haven't been given some important pieces that we really need to do our jobs (although some people accuse us of being not all there"). We have occasionally been asked to make bricks out of straw (sorry, different allegory). We have survived a number of

stressful journeys and harrowing metamorphoses, some of which might be likened to being swallowed up. But we remain focused on our mission, and the mission of our command.

The Mission

The mission of the AMC organization located at Natick, Massachusetts has also been fairly constant over the last 45 years, though the organization has been anything but. It's a mission that has always focused on ensuring that the American soldier is the best fed, best equipped warfighter in the world. Our product lines are the necessities of life: food, clothing, and shelter. Not to mention precision guided airdrop capability. And laser protective lens technology. And boots that keep your feet from being blown off if you step on a landmine. That kind of thing. It's a great mission and we love it, no matter what the organization happens to be called today.

The Command

The Soldier Systems Center is what it happens to be called today, or SBCCOM North. SBCCOM, in case you haven't heard, stands for the Soldier and Biological Chemical Command, headquartered at the Edgewood area of Aberdeen Proving Grounds (SBCCOM South). This new MSC is the result of a merger of the Soldier Systems Command and the Chemical Biological Defense Command. Most folks who have been around AMC for awhile just say "Natick."

The People

Let me tell you about the staff of the Soldier Systems Center Legal Office. There are 6 attorneys, a paralegal specialist, and a secretary. As is often the case with small offices, we are all generalists, with the exception of Vin Ranucci, our Intellectual Property Counsel. Although not on our TDA, we currently enjoy the support of 2 trained 71Ds, who are assigned at Natick as Human Research Volunteers. Our "ranking members" (in terms of length of time at Natick, NOT AGE!) are **Jessica Niro** and **Richard Mobley**.

AMC Legal Office Profile

Soldier Systems Center, Natick, Mass. (Continued)

Jessica Nero

Jessica, who has been described by COL Buzz France as “the best paralegal in the Army” is very involved with the IP caseload and CRADA processing, and is developing OTJ expertise in the mysteries of foreign filing.

Richard Mobley

Richard is going for the AMC record on number of GAO protests on a single procurement, and can recite all the “Ed Korte” lines from the AMC ethics script verbatim. When he isn’t hip deep in procurement and ethics responsibilities, he’s having fun with FOIA.

Jim Savage

Jim is a name known to many of you. Jim was recovered from the icywaters of the Charles River after the SS Watertown Arsenal was sunk by a BRAC. He is Natick’s Labor Counselor, and now the team leader for labor and administrative law in the merged SBCCOM legal office.

Vin Ranucci

Vin is SBCCOM’s new team leader for Intellectual Property, and spends much of his time trying to find another member of that team. Actually, Vin brings considerable IP experience and business acumen from his days with DOE, Navy, Air Force, Digital Equipment Corp. and Eaton Corp. We hope that Vin has found a job that he can stick with for awhile.

Peter Tuttle and **Srikanti Dixit** round out the general attorneys in the office.

Peter Tuttle

Peter brings a background as a Safety Specialist and a stint in DCMC’s Boston legal office to bear on his responsibilities as our Environmental attorney and procurement advisor. His talent as a hockey player may explain his reputation for skating the edges, but not the thin ice. Peter has found many fans while providing advice to the IMMC in the A76 arena.

Srikanti Dixit

Sri is our newest attorney. Sri previously worked

with us as a legal intern while she was in law school, and we were fortunate to be able to bring her on permanently this past February. She’s getting a crash course in acquisition and admin law issues, and seems to have a dangerous attraction to Marine Corps programs.

Maria McDermott

Which leaves Maria McDermott, the office secretary, and me. Maria, an excellent office administrator. Maria recently returned to the office from maternity leave, after giving birth in August to a beautiful girl, Nicole.

John Stone

I have been in the AMC legal family since 1986, both as an active duty “AMC-JAG Corps MOU Intern” at TACOM, and as a civilian attorney at TACOM and Natick. I like to think I am a better lawyer than I was a soldier. I have always admired the quality of this firm, the best law firm in government, and I appreciate the continuing opportunity to be a part of it. I would really appreciate having the opportunity continue for a few more years yet.

Faces In The Firm

Departures

AMCOM

CPT Christopher J. Wood is leaving active duty and has accepted a position as a civilian attorney with the Corps of Engineers in Huntsville, AL.

Jeffery L. Augustin is leaving the Federal Service and has accepted a position with the State of Missouri in Jefferson City, MO.

Brian E. Toland has accepted a position with Defense Contract Management Command in Hartford, Connecticut, and will be relocating there in January.

Nancy Claggett is returning home to St. Louis where she will be working for the Defense Information Systems Command.

Awards & Recognition

HQ AMC

Linda Mills received the Chief of Staff's coin for her participation in the Disabilities Program.

WSMR

SGT Christopher Buscarini was selected as the AMC Noncommissioned Officer of the Year. He is now attending the Basic NCO Course at Fort Jackson, SC, and will be promoted to SSG upon return to Whites Sands.

Captain Marc Howze, Acquisition Law, was presented the Army Achievement Award. Major General Joseph Arbuckle made the presentation in an unannounced visit to the Law Center on 24 November.

Promotions

HQAMC

Debbie Arnold has been selected as Technology Licensing Specialist in the Intellectual Property Division.

IOC

Brad Byrnes, Deputy Staff Judge Advocate, was promoted to Major on 1 October 1998.

Births

IOC

Brian Weber, former Captain in the IOC Law Center, and his wife Mary are the proud parents of a baby boy. Michael James, weighing in at 6 lbs., 14 ozs., was born 5 November. The Weber's now live in New York. Congratulations to mom, dad, and big sister Katherine!

Mary Lou Massa, Legal Assistant, General Law/Installation Support, became a grandmother for the third time on 13 November. Gramma "Lou" and Grampa Chuck's daughter, Kristin and her husband, Rob Davis, celebrated the birth of their first child, Alyssa Jo. Alyssa weighed in at 7 lbs., 4 1/2 ozs.

AMCOM

Brian and Andrea Toland are the proud parents of Peter Thomas Toland, who was born on 7 October. He weighed 6 pounds and 14 ounces and was 18 inches long.

Jessica Augustin was born on 7 October 1998 to **Jeff and Michele Augustin**. She weighed 9 pounds, 2 ounces and was 22 inches long.