

ARSENAL STATUTE

“The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States so far as those factories or arsenals can make those supplies on an economical basis.” 10 United States Code section 4532 (a)

The Arsenal Statute is a fairly old, little used, and oft misunderstood piece of legislation. That said, it could very well be the key to maintaining the Army’s Organic Industrial Base. The following statement by an Arsenal Statute sponsor best illustrates this point. “The purpose of this amendment is to compel the executive officers of the government to have government work done at such arsenals as [Watervliet] and to cease handing out appropriations to private manufacturers. It is perfect nonsense to allow [over \$20,000,000 in government investment] to go to waste and at the same time turn over work to be done by contract to private manufacturers.” 59 Cong. Rec. 4157 (1920).

Recent events regarding the ever-shrinking role of Government-owned facilities in acquisition planning have increased debate about the proper role of the Arsenal Statute. Is an Arsenal Statute analysis mandatory? To what extent if any does the Arsenal Act require “component breakout” with “system buys”? What does “supplies” mean? Must a facility currently make the supplies needed or simply be capable of making the needed supplies? What is meant by economical basis? Are “out-of pocket” cost evaluations always required or is it sometimes appropriate to evaluate “fully burdened” costs? When “out of pocket” costs are evaluated, should Program Managers be billed on the basis of “fully burdened” costs? To what facilities does the Arsenal Statute apply? Those are but a few questions raised by the Arsenal Statute. The General Accounting Office has addressed many of the questions. Nevertheless, questions still abound. This article will not attempt to answer all the questions raised. Other questions may be addressed in later articles. Rather, this article will address the question “To what facilities does the Arsenal Statute apply?”

Bottom line up front. The Arsenal Statute applies to Government-owned production facilities including arsenals, factories, ammunition plants and depots. This includes both Government-owned Government-operated (GOGO) and Government-owned Contractor-operated (GOCO) facilities.

Even though GOCO application has been a consistently applied principle of the Arsenal Statute, there are those in the acquisition community that mistakenly believe that the Arsenal Statute only applies to GOGOs. Two documents form the basis for this confusion. The first is the Office of the Secretary of the Army (OSA) Memorandum dated 30 July 92 from Assistant Secretaries of the Army Susan Livingstone and Stephen K. Conner. The Conner-Livingstone memorandum “provides guidance for the use of the authority of the Arsenal Statute.” However, the memo only provides guidance as it

relates to GOGOs. The purpose of the memorandum was not to eliminate GOCOs from the Arsenal Statute. Rather the purpose of the memo was to establish a procedure to identify and workload GOGO industrial facilities as manufacturing sources prior to any procurement action. To that end, the policy directed pre-solicitation make/buy decisions rather than head-to-head competitions with private industry.

The second source of confusion is the Army Materiel Command's (AMC) draft Make or Buy regulation dated 6 June 1995. In short, AMC's regulation prescribes policies, responsibilities and procedures for implementing the Conner-Livingstone memorandum. As such, it also limits its application to GOGO facilities.

Notwithstanding OSA and AMC omission of GOCO facilities in their policies, it is a well-settled principle that the Arsenal Statute applies to GOCO facilities. Any confusion regarding this fact was settled by the Comptroller General Opinion B-143232, December 15, 1960. In that opinion, the Comptroller General stated "'Government-owned factories' must be interpreted to include both Government-owned Government-operated, and Government-owned Contractor-operated industrial facilities." Since that opinion, the GAO has consistently reaffirmed that position. See Talon Manufacturing Company, Inc. B-261687, B-261687.2, October 19, 1995, Action Manufacturing Company B-220013, November 12, 1985, Olin Corporation B-189604, January 18, 1978, Olin Corporation, B-175703, July 23, 1973.

The future of the Army's industrial base is at best uncertain. However, if you want an indicator of what's to come, look to the Arsenal Statute. The Arsenal statute may be the only way to ensure that the full potential of the Army's Organic Industrial Base is used for economical acquisition of supplies and ensure the availability of these facilities and capabilities to meet urgent surge and contingency materiel requirements. As the Arsenal Statute goes, so goes the Army's Organic Industrial Base.

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