



UNDER SECRETARY OF THE ARMY
WASHINGTON

29 MAR 2000



CHALLENGE Number 2000-0087

[REDACTED]
National President
American Federation of Government Employees
80 F Street, N.W., 9th Floor
Washington, D.C. 20001

Dear [REDACTED]:

This responds to your appeal of the February 24, 2000, decision of the Assistant Secretary of the Army (Manpower and Reserve Affairs), denying your challenge to the 1999 FAIR Act inventory. I received your appeal on March 14, 2000.

Supply, Real Estate, Family Services and Medical Functions

Activity Challenged. You are appealing the decision that the supply operations functions included in Function Code S731, the real estate administration and other installation services functions included in Function Code S999, the family services functions included in Function Code G904, and the medical functions included in Function Code H999 were properly included on the list.

Decision. I have reviewed the Assistant Secretary's decision, which is incorporated herein by reference, in light of your appeal. Based upon this review, I have determined that the selected activities included under the above Function Codes pertaining to supply operations, real estate administration and other installation support functions, family services functions and medical functions are not inherently Governmental. Therefore, I am affirming the challenge decision that they are properly included in the Army's FAIR Act list.

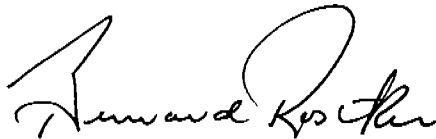
Rationale. Your appeal suggests that a Federal worker, working at the installation level in the supply operations and real estate administration functions, is the only effective means of ensuring effective oversight, control and disposal of Government materials and property; and that contractor performance of the supply operations and real estate administrative functions increases the potential for litigation, liability problems and pilferage of Government property. Your appeal also suggests that there is a public interest rationale supporting the characterization of quality of life related functions, such as family services and medical, as inherently Governmental, even though these functions do not neatly fit within the Office of Federal Procurement Policy Letter (OFPP) 92-1 framework.



However, determining what is or is not inherently Governmental, the focus of the FAIR Act, is a different issue from determining what is appropriate for private sector performance. Many important core missions of the Army, including a significant subset of those functions included in your challenge and appeal, are not inherently Governmental and have, therefore, been included on the FAIR list as non-inherently Governmental functions exempted from private sector performance. For example, certain family services and medical functions are currently exempted by the Department from private sector performance as core capabilities within the Department.

I agree with your contention that quality of life issues are critically important and must be addressed by the Army's leadership. I also agree that our Army civilian employees constitute a dedicated workforce that has and continues to perform very well the many tasks necessary to provide family services and medical care for our soldiers. However, this does not mean that this work must be determined to be inherently Governmental as a matter of law. Neither does past practice dictate that work once performed by Government employees must always be performed by Government employees, when some or all of it can be performed as well and at less cost by the private sector.

In this connection please note that the Army's FAIR Act determinations are only one step in pursuing a larger objective. The larger objective is to ensure that Army functions and activities are performed in a manner that is both cost-effective and in the best interests of the taxpayers. In this connection, the Army FAIR Act inventory will be reviewed in conjunction with Army's larger, ongoing review of all functions for possible reengineering, privatization, consolidation or other reinvention efforts. As the Assistant Secretary indicated, these reviews may lead to decisions to keep performance of some activities in-house based on risk assessment, national security considerations, or enlightened human resources management.

A handwritten signature in black ink, appearing to read "Bernard Rostker". The signature is fluid and cursive, with a large initial "B" and "R".

Bernard Rostker