



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON DC 20310-0111

February 25, 2000

CHALLENGE Number 2000-0085

[REDACTED]
Contract Services Association of America
1200 G Street, N.W.
Suite 750
Washington, D.C. 20005

Dear [REDACTED]

This responds to your letter of January 28, 2000 challenging the entire inventory of non-inherently governmental functions released by the Department of the Army pursuant to the FAIR Act of 1998.

Your letter does not provide sufficient descriptions of specific functions or activities that you are challenging as improperly included in or omitted from the Army inventory. Therefore, I have decided not to accept your letter as a formal challenge under the Act.

Although I have not accepted your letter as a challenge, I do want to comment on the objections expressed in your letter to the Army inventory. First I would like to clear up an apparent misunderstanding. This concerns the purpose of the FAIR Act. It is not to compile a list of activities that are comprehensively available for outsourcing and privatization. Rather it is to provide a process for executive agencies to identify activities that, in each agency's judgment, are not inherently governmental functions. The development of these inventories of each agency's non-inherently governmental activities is a necessary first step in pursuing a larger objective. The larger objective is to ensure that these activities are performed in a manner that is both cost-effective and in the best interests of the taxpayers. In this connection, agencies are required to review their FAIR Act inventories in conjunction with their larger ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention efforts.

In light of these FAIR Act objectives, we have found the functional definitions at the Army web site to be adequate to make first-year determinations about which Army functions and activities are not inherently governmental. We also received 123 viable FAIR Act challenges from interested parties that have helped us confirm or refine our analysis of these functions. We opted not to strive for a greater level of detail in the inventory based on costs, benefits, and practicality. There is a tradeoff between achieving greater levels of detail and assuring consistency and accuracy in the

identification of functions and activities in an organization as large as the Army. So far, the costs of compiling the current Army inventory are estimated as \$786,000 and about 19,800 man-hours.

Your letter suggests, as did some of the other challengers, that too many functions and activities in the Army inventory were misclassified as not being available for competitive sourcing. 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. The Army may consider it imprudent to contract activities designated as non-inherently Governmental based on risk assessment and national security considerations, or enlightened human resources management. As indicated above, the Army will evaluate the listed functions in due course for purposes of private sector competition. At those times more deliberate evaluations will be made in light of the Army's unique roles and missions, human resources management policies, and a National Security-based risk assessment process. This may well lead to increases or decreases in the mix of functions available for private sector performance. In this connection, you should be aware that the Army inventory reflects a determination that more than 95 percent of its civilian work force is performing functions that are determined to be non-inherently Governmental.

As you have noted, work performed by military personnel is not included in the Army inventory. This is because Section 2 of the FAIR Act requires each agency to develop a list of activities performed by Federal Government sources. The term Federal Government source is defined in section 5(1) as any organization within an executive agency that uses Federal Government employees to perform the activity. Military personnel are members of the Armed Forces of the United States, under the command of the President as Commander in Chief and subject to the Uniform Code of Military Justice. They are not employees appointed to positions in the civil service. Consequently, the functions performed by military personnel are not activities performed by Federal Government sources. Therefore, they are outside the scope of the FAIR Act.

Your letter suggests that most installation support services are not inherently governmental but are not included in the Army list. As examples, you letter mentions morale, welfare, and recreation; motor vehicle maintenance; and building maintenance. In fact, all of these functions are listed. Here are some of the relevant function codes: G011, H999, P100, S700, 701, 724,740, and 999; U100, 600 and 800; W999; Y120, 200, 410, 510, 520, 530, 540, and 999; and Z991 and 999.

Finally, if you have not already done so, you may wish to review the Army web site, <http://www.asamra.army.pentagon.mil/fair>, which is hyperlinked to the DOD FAIRNET website at <http://gravity.lmi.org/DODFAIR>. At that web site you will find more information about the Army inventory, including the dictionary of functional definitions.

We also intend on posting copies of the Army's adjudications of the 123 FAIR Act challenges on that same web site when they are final (after the appeal period has lapsed).

Appeal Rights. You have the right to appeal my decision since it is adverse to your Challenge. The specific procedures for submitting an appeal are set forth at the enclosure to this decision.



Patrick T. Henry
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosure

Appeal Rights

Appeals must be in writing and transmitted by United States mail, express mail delivery or other similar service, or facsimile transmission, or may be delivered in person only if the person making the delivery is authorized access to the Pentagon. (To assist in processing, appellants may mark "FAIR Appeal" on the envelope.) Appeals must be submitted to the office listed below within 10 working days of the date on which the challenger received the decision denying or rejecting the challenge:

Department of the Army
Office of the Assistant Secretary
Manpower and Reserve Affairs
ATTN: SAMR-FMMR-FAIR
111 Army Pentagon
Washington, D.C. 20310-0111
Fax: 703-614-6833