



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



February 18, 2000

REPLY TO
ATTENTION OF

CHALLENGE Number 2000-0092



Dear 

This responds to your challenges to the Army's 1999 FAIR Act inventory. Your challenges concern one activity.

Standing. As an employee within the meaning of 5 U.S.C. performing functions included under Function Code U999, "Other Training Functions," you are an "interested party" who is qualified to submit challenges of inclusion or exclusion to the Army list. Other issues raised in your challenge are not relevant to FAIR Act determinations.

Date of Receipt. I received your Challenge on January 24, 2000.

Function Code U999, "Other Training Functions"

Activity Challenged. You have challenged the inclusion on the list of work performed under the Function Code U999, "Other Training Functions." This work includes training support functions, G3/Directorate of Plans, Training and Mobilization, and force integration functions included within Function Code U999 for "Other Training Functions," as defined in the functional definition at 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>.

Decision. I have determined that the activities included under the above Function Codes pertaining to the G3/Directorate of Plans, Training and Mobilization other functions included within Function Code U999 are not inherently Governmental. Therefore, they are properly included in the Army's FAIR Act list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not inherently Governmental. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the challenged functions and activities listed above involve operational and planning, training support, and mobilization planning functions within the G3/Directorates of Plans, Training and

Mobilization or similar organizations at the installation level. The G3/Directorate of Plans, Training and Mobilization function and similar functions are currently undergoing A-76 competitions in some Army installations. Although the G3/Directorate of Plans, Training and Mobilization function and other functions included in Function Code U999 at the installation level are important capabilities for the Department, these functions do not entail substantial discretion or value judgments in making decisions for the Government within the meaning of the FAIR Act. Moreover Office of Management and Budget Circular A-76 characterizes education and training functions, in general, as commercial functions.

Significance. The significance of a non-inherently Governmental designation for an activity is discussed at the Army web site hyperlinked to the DOD FAIRNET at <http://www.asamra.army.pentagon.mil/fair>. In some cases there may be legal impediments to contracting activities designated as non-inherently Governmental, as reflected in statutes, international agreements, and restrictions on contracting for personal services. In other cases, 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. Such a determination has been made at the present time in the case of some of the activities included within this challenge.

Scope. The Army's functions are defined by its unique roles and missions. Therefore, the Army's FAIR Act decisions may not be extended to other agencies with different missions based solely on function code titles. The Army FAIR Act Inventory included civilian positions performing functions within the Army infrastructure and within Civil Works. The FAIR Act Inventory excluded all contractor positions and all military positions, as well as all personnel performing functions in the following mission areas within the Army: Major Theater of War, Smaller Scale Contingency, Base Engagement Force, Strategic Reserve, Domestic Support, or Homeland Defense.

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.



Iris A. Bulls

Acting 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



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 22, 2000

CHALLENGE Number 2000-0008



Dear [Redacted]

This responds to your challenges to the Army's 1999 FAIR Act inventory. Your challenges concern one activity.

Standing. As an employee within the meaning of 5 U.S.C. performing functions included under Function Code U999, "Other Training Functions," you are an "interested party" who is qualified to submit challenges of inclusion or exclusion to the Army list. Other issues raised in your challenge are not relevant to FAIR Act determinations.

Date of Receipt. I received your Challenge on January 27, 2000.

Function Code U999, "Other Training Functions"

Activity Challenged. You have challenged the inclusion on the list of work performed under the Function Code U999, "Other Training Functions." This work includes training support functions, G3/Directorate of Plans, Training and Mobilization, and force integration functions included within Function Code U999 for "Other Training Functions," as defined in the functional definition at 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>.

Decision. I have determined that the activities included under the above Function Codes pertaining to the G3/Directorate of Plans, Training and Mobilization other functions included within Function Code U999 are not inherently Governmental. Therefore, they are properly included in the Army's FAIR Act list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not inherently Governmental. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the challenged functions and activities listed above involve operational and planning, training support, and mobilization planning functions within the G3/Directorates of Plans, Training and

Mobilization or similar organizations at the installation level. The G3/Directorate of Plans, Training and Mobilization function and similar functions are currently undergoing A-76 competitions in some Army installations. Although the G3/Directorate of Plans, Training and Mobilization function and other functions included in Function Code U999 at the installation level are important capabilities for the Department, these functions do not entail substantial discretion or value judgments in making decisions for the Government within the meaning of the FAIR Act. Moreover Office of Management and Budget Circular A-76 characterizes education and training functions, in general, as commercial functions.

Significance. The significance of a non-inherently Governmental designation for an activity is discussed at the Army web site hyperlinked to the DOD FAIRNET at <http://www.asamra.army.pentagon.mil/fair>. In some cases there may be legal impediments to contracting activities designated as non-inherently Governmental, as reflected in statutes, international agreements, and restrictions on contracting for personal services. In other cases, 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. Such a determination has not been made at the present time in the case of the activities included within this challenge.

Scope. The Army's functions are defined by its unique roles and missions. Therefore, the Army's FAIR Act decisions may not be extended to other agencies with different missions based solely on function code titles. The Army FAIR Act Inventory included civilian positions performing functions within the Army infrastructure and within Civil Works. The FAIR Act Inventory excluded all contractor positions and all military positions, as well as all personnel performing functions in the following mission areas within the Army: Major Theater of War, Smaller Scale Contingency, Base Engagement Force, Strategic Reserve, Domestic Support, or Homeland Defense.

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

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111 ARMY PENTAGON
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REPLY TO
ATTENTION OF

February 22, 2000

CHALLENGE Number 2000-0045



Dear

This responds to your challenges to the Army's 1999 FAIR Act inventory. Your challenges concern one activity.

Standing. As an employee within the meaning of 5 U.S.C. performing functions included under Function Code U999, "Other Training Functions," you are an "interested party" who is qualified to submit challenges of inclusion or exclusion to the Army list. Other issues raised in your challenge are not relevant to FAIR Act determinations.

Date of Receipt. I received your Challenge on January 28, 2000.

Function Code U999, "Other Training Functions"

Activity Challenged. You have challenged the inclusion on the list of work performed under the Function Code U999, "Other Training Functions." This work includes training support functions, G3/Directorate of Plans, Training and Mobilization, and force integration functions included within Function Code U999 for "Other Training Functions," as defined in the functional definition at 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>.

Decision. I have determined that the activities included under the above Function Codes pertaining to the G3/Directorate of Plans, Training and Mobilization and other functions included within Function Code U999 are not inherently Governmental. Therefore, they are properly included in the Army's FAIR Act list.

Rationale. The FAIR Act list includes only functions and activities that, in the judgment of the head of the agency, are not inherently Governmental. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the challenged functions and activities listed above involve operational and planning, training support, and mobilization planning functions within the G3/Directorates of Plans, Training and

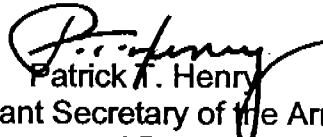
Mobilization or similar organizations at the installation level. The G3/Directorate of Plans, Training and Mobilization function and similar functions are currently undergoing A-76 competitions in some Army installations. Although the G3/Directorate of Plans, Training and Mobilization function and other functions included in Function Code U999 at the installation level are important capabilities for the Department, these functions do not entail substantial discretion or value judgments in making decisions for the Government within the meaning of the FAIR Act. Moreover Office of Management and Budget Circular A-76 characterizes education and training functions, in general, as commercial functions.

The collection, control and disbursement of appropriated and other Federal funds in connection with the training support functions included under Function Code U999, "Other Training," do not involve substantial discretion, but are ministerial in nature. Likewise, the additional duties involving property control, hand receipts and Reports of Survey are ministerial in nature. The additional duty of Contracting Officer Representative (COR) is that of an agent of the Contracting Officer with substantially circumscribed authority precluding a COR from awarding, modifying or terminating a contract. All of these functions are so ministerial in nature or severely circumscribed by law, rule and regulation as to render all of these tasks as not inherently Governmental.

Significance. The significance of a non-inherently Governmental designation for an activity is discussed at the Army web site hyperlinked to the DOD FAIRNET at <http://www.asamra.army.pentagon.mil/fair>. In some cases there may be legal impediments to contracting activities designated as non-inherently Governmental, as reflected in statutes, international agreements, and restrictions on contracting for personal services. In other cases, 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. Such a determination has not been made at the present time in the case of the activities included within this challenge.

Scope. The Army's functions are defined by its unique roles and missions. Therefore, the Army's FAIR Act decisions may not be extended to other agencies with different missions based solely on function code titles. The Army FAIR Act Inventory included civilian positions performing functions within the Army infrastructure and within Civil Works. The FAIR Act Inventory excluded all contractor positions and all military positions, as well as all personnel performing functions in the following mission areas within the Army: Major Theater of War, Smaller Scale Contingency, Base Engagement Force, Strategic Reserve, Domestic Support, or Homeland Defense.

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