



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 14, 2000

CHALLENGE Number 2000-0003



Dear [REDACTED]

This responds to your challenge to the Army's 1999 FAIR Act inventory. Your "challenge" concerns one activity.

Standing. As an employee within the meaning of 5 U.S.C. 2105 performing the functions performed by employees in the "Advertising and Public Affairs," Function Code S701, you are an "interested party" who is qualified to submit challenges of inclusion or exclusion to the Army list.

Date of Receipt. I received your "Challenge" on January 21, 2000.

Function Code S701, Advertising and Public Affairs

Activity Challenged. You have challenged the inclusion of "Advertising and Public Affairs," Function Code S701, on the list. This function is defined to include civilian public affairs services included within Function Code S701 for "Advertising and Public Affairs" 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 Function Code S701 pertaining to "Advertising and Public Affairs" 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 discretion in applying Government authority or the making of value judgments in making decisions for the Government. The purpose of the public affairs functions and activities listed above is to provide official information about the Army to the public and the public media, and to foster good relations between the Army and local communities; none suggest an application of Governmental authority or making value judgments in making decisions for the Government.

Another consideration is that public relations services are commonly available in the private sector and have been included in A-76 solicitations. The Army FAIR Act list presumes that the exercise of discretion within the public affairs function is limited to senior personnel within the occupational series 1035, "Public Affairs." This presumption is based in part on the degree to which the exercise of discretion within this function is substantially circumscribed by law, rule and regulation. Accordingly, the performance of public affairs functions by personnel who are assigned to positions at grades GS-13 and above within management headquarters are presumed to be inherently Governmental. However, most of the work in performing these functions are performed by personnel in lower grades.

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 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

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